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113-5661

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~300~~. 47

JACOB P. EFFINGER, PLAINTIFF IN ERROR,

vs.

JAMES KENNEY, TRUSTEE OF ALLAN C. BRYAN.

FILED OCTOBER 6, 1882.

No. ~~406~~. 216

JAMES KENNEY, TRUSTEE OF ALLAN C. BRYAN, PLAINTIFF IN ERROR,

vs.

JACOB P. EFFINGER.

FILED APRIL 14, 1883.

IN ERROR TO THE SUPREME COURT OF APPEALS FOR THE STATE OF VIRGINIA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 309.

JACOB P. EFFINGER, PLAINTIFF IN ERROR,

vs.

JAMES KENNEY, TRUSTEE OF ALLAN C. BRYAN.

FILED OCTOBER 6, 1882.

No. 496.

JAMES KENNEY, TRUSTEE OF ALLAN C. BRYAN, PLAINTIFF IN ERROR,

vs.

JACOB P. EFFINGER.

FILED APRIL 14, 1883.

IN ERROR TO THE SUPREME COURT OF APPEALS FOR THE STATE OF VIRGINIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

[SEAL.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Jacob P. Effinger, appellant, and James Kenney, trustee of Allan C. Bryan, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution,
2 or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Jacob P. Effinger, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-third day of February, in the year of our Lord one thousand eight hundred and eighty-two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
STEPHEN J. FIELD,
Justice of U. S. Sup. Court.

[Endorsed:] Rec'd by mail, and filed February 27, 1882. Jos. A. Waddell, clerk of supreme court of appeals of Va., at Staunton.

3 The United States of America to James Kenney, trustee of Allan C. Bryan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the

second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein Jacob P. Effinger is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Stephen J. Field, associate justice of the Supreme Court of the United States, this 23d day of February, in the year of our Lord one thousand eight hundred and eighty-two.

STEPHEN J. FIELD,
Justice of U. S. Sup. Court.

3½ I acknowledge service of the within.

JAMES KENNEY,
Trustee for A. C. Bryan, &c.

25th Feb'y, 1882.

[Endorsed:] Rec'd by me March 10, 1882. Jos. A. Waddell, clerk supreme court of appeals of Va., at Staunton.

4 Know all men by these presents, that we, Jacob P. Effinger, as principal, and James Sullivan & M. O. Crabill, as sureties, are held and firmly bound unto James Kenney, trustee of Allan C. Bryan, in the full and just sum of five hundred dollars, to be paid to the said James Kenney, trustee of Allan C. Bryan, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this thirteenth day of February, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately, at a supreme court of appeals of the State of Virginia, in a suit depending in said court between Jacob P. Effinger, appellant, and James Kenney, trustee of Allan C. Bryan, a decree was rendered against the said Jacob P. Effinger, and the said Jacob P. Effinger having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said James
4½ Kenney, trustee of Allan C. Bryan, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Jacob P. Effinger shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JACOB P. EFFINGER. [SEAL.]
JAMES SULLIVAN. [SEAL.]
M. O. CRABILL. [SEAL.]

Sealed and delivered in the presence of—
W. B. LURTY,
Clerk U. S. Court, W. D. of Va.

Approved by—
STEPHEN J. FIELD,
Justice of U. S. Sup. Court.

WESTERN DISTRICT OF VIRGINIA, *to wit:*

Personally appeared before me James Sullivan and M. O. Crabill, sureties in the within bond, and being sworn, depose and say
5 that they are each worth the sum of one thousand dollars over and above the amount of their debts, or any obligations that they are bound for or expect to have to pay, or for which they are surety for and expect to have to pay.

Given under my hand, this 13th day of February, 1882.

W. B. LURTY,
Clerk U. S. Circuit Court.

In the Clerk's Office of the Supreme Court of Appeals of Virginia, at Staunton, March 16, 1882.

I, Jos. A. Waddell, clerk of the court aforesaid, do certify that the foregoing is a true copy of the bond, &c., filed in my office on the 27th day of February, 1882.

Teste: JOS. A. WADDELL, *Clerk.*

6 *Petition for Appeal and Supersedeas.*

Supreme Court of Appeals of Virginia, at Staunton, Va.

To the supreme court of appeals of Virginia:

The petition of Jacob P. Effinger respectfully represents that he is aggrieved by a final decree of the circuit court of Rockingham county, Virginia, rendered on the 29th day of November, 1878, in a chancery cause pending therein, wherein he was defendant and James Kenney, trustee of Allan C. Bryan, was complainant.

A transcript of the record of the decree complained of is herewith presented, from which it will be perceived that the case is as follows:

On the 7th day of January, 1861, Allan C. Bryan and wife conveyed all their estate, both real and personal, to James Kenney, in trust for the benefit of the wife and creditors of the said Bryan. And on the 30th day of March, 1863, the said Kenney, as such trustee, sold the "home farm" of said Bryan at public auction to the highest bidder, in pursuance of the said deed of trust, at which sale your petitioner became the purchaser of said farm at the price of $210.00 per acre, one-third to be paid cash in hand, and the balance in one and two years from the day of sale, with the privilege of paying the first deferred payment also in hand, and your petitioner did then and there pay the down payment and the first deferred payment, and executed his bond to the said Kenney, trustee,

for the said second deferred payment, to wit, $7,067.70, and on the —— day of ——, 1863, the said Kenney, as such trustee, conveyed the said land to your petitioner with special warranty.

And it will further appear from said record that the said farm was sold with reference to Confederate States treasury notes as a standard of value, and therefore the cash payment and the first deferred payment were made by your petitioner to the said trustee in Confederate States treasury notes, and the said bond, given for $7,067.70, for the said second and last deferred payment, was payable in like currency. But the said trustee, refusing to receive payment of said bond at its maturity in such currency or value thereof after the termination of the late war, instituted suit upon said bond against your petitioner in the county court of said county of Rockingham, for the use of A. M. Newman, in which suit,

7 by reason of erroneous instructions and rulings of said county court, judgment was rendered against your petitioner, on the — day of August, 1866, for the full amount of said bond and interest and costs, from which judgment your petitioner appealed to the said supreme court of appeals of Virginia, by which court the said judgment was reversed. (See 24 Grattan, 116.) Whereupon the said trustee dismissed his said suit at law, instituted a suit in chancery in the said circuit court of Rockingham county against your petitioner to recover the value of the said bond or payment, and subject the said farm to sale to satisfy the same. The depositions of numerous witnesses were taken, and the great preponderance of evidence in said cause proves clearly and conclusively that, although the said farm had been assessed for taxation at $80 per acre before the war, yet by reason of the unsettled condition of the country, the scarcity of specie or other good money, and the danger of confiscation, and the repeated destruction of property during the war, the said farm could not have been sold at the time of the sale thereof by said trustee at even $40 per acre, in specie or its equivalent, even upon time. But notwithstanding these facts, the said circuit court of Rockingham county in Nov., 1878, decided that the said farm at the time of the said sale thereof to your petitioner was worth $80 per acre in United States currency (as of the 29th day of November, 1878, instead of March, 1863), when the said currency was almost, if not quite, equal in value to specie, when in truth and in fact on the day of said sale the said farm did not possess one-half of the value so assessed and ascertained by said court, as shown by the evidence. Hence the said court ascertained and decided by the decree aforesaid that the said trustee should recover against your petitioner the sum of $2,692.33, with legal interest thereon from the 30th day of March, 1865, till paid, and the costs of said suit, which was regarded as one-third of the value of said farm (two-thirds having been regarded as paid by the said cash payment and first deferred payment to the said trustee).

It will be further seen from the said record (pages 78, 79, and 80, and also in the deposition of A. M. Newman,) that on the 24th day of August, 1867, your petitioner paid to A. M. Newman, then the assignee of said debt, $424.06, and on the 1st day of January, 1868,

he paid to same $424.06, all in good money, in payment of six per cent. interest on the whole $7,067.70, for two years, collected from your petitioner by execution obtained in pursuance of an act of the General Assembly of Virginia providing for the collection of two years' interest upon debts previously contracted, and was therefore paid under compulsion; and that he also paid $21.84 to Spencer A. Coe, United States tax collector, April 2d, 1866, being the amount of United States direct taxes upon the farm aforesaid for the year 1862, before the said farm was purchased by your petitioner, yet the said court, in rendering the decree complained of as aforesaid, failed to give your petitioner credit for the $21.84 taxes aforesaid, and also failed to give him credit for the $848.12 paid by him upon interest as aforesaid, but instead thereof only allowed him credit for the interest on $2,692.33 for two years only, by making that sum
8 bear interest from the 30th day of March, 1865, instead of the 30th day of March, 1863, when in truth and in fact two years' interest on the said sum of $2,692.33 amounted to but $323.07, instead of $848.12. Hence your petitioner was improperly deprived of $525.05 and $21.84, for which he was justly entitled to a credit upon whatever was justly due from him upon the bond or payment aforesaid.

And in view of the fact that the down payment (including the cash and first deferred payments), made by your petitioner, paid more than $14,000 of old anti-war debts of A. C. Bryan, dollar for dollar, and the further fact that the land was never, under the most favorable circumstances, considered worth more than about $8,000; and in view of the further fact that the supreme court of appeals of Virginia has already decided (24 Grattan, 123) that said bond or payment "was solvable in Confederate currency," the most just and proper measure of recovering in this cause would have been the scaled value of the $7,067.70 of Confederate money, either at the date of said bond or the date of its maturity, instead of one-third of the value of the land.

Your petitioner, therefore, assigns the following errors:

1st. The court erred in not scaling the said bond or payment to the true value of $7,067.70 of Confederate currency, either on the 30th day of March, 1863, or on the 30th day of March, 1865, at its maturity, instead of rendering a decree against your petitioner for $2,692.33, one-third of the value of said land, with interest thereon, as aforesaid.

2d. The court erred in assessing the value of said farm in March, 1863, in the very midst of the war and every conceivable uncertainty and scarcity of good money, at $80 per acre, when it would not have sold at half that price in specie or its equivalent at that time, either for cash or upon payments, for the reasons stated by the witnesses in their depositions.

3d. The court greatly erred in not giving your petitioner credit in full for the $848.12 paid by him on said debt, or payment in 1867 and 1868, as aforesaid, and for the $21.84 paid by him on U. S. taxes for 1862, and assessed upon said farm before it was purchased by your petitioner.

And for these and many other errors apparent upon the said record, he prays that he may be allowed an appeal from the said decree.

JACOB P. EFFINGER,
By Counsel.

I, G. W. Berlin, an attorney practising in the supreme court of appeals of Virginia, do certify that in my opinion there is sufficient matter for reversing the decree complained of in the foregoing petition.

G. W. BERLIN.

Appeal allowed and supersedeas awarded. Bond required in the penalty of $200, with condition as the law directs.
Aug. 5, '80. JOS. CHRISTIAN.

To the clerk of the supreme court of appeals, at Staunton.

9 VIRGINIA, *to wit:*

In the Circuit Court of Rockingham County.

Among the papers and records of the circuit court of said county appears the following, to wit:

JAMES KENNEY, Trustee for A. C. Bryan, Complainant,
vs.
JACOB P. EFFINGER, A. M. EFFINGER, and A. M. NEWMAN, Def'ts. } In Chancery.

* * * * * * * *

To the Hon. H. R. Turner, judge of the circuiut court of Rockingham:

Humbly complaining, sheweth to the court, your orator, James Kenney, trustee of Allen C. Bryan, deceased, that on the —— day of ———, 18—, the said Allen C. Bryan conveyed to your orator his lands in Rockingham county, in trust, for the benefit of his creditors. A copy of said deed of trust will be filed with this bill, marked "A," and prayed to be read as a part thereof.

Your orator further sheweth that among other lands conveyed in said deed was a tract of about 100 acres, adjoining the town of Harrisonburg and the lands of Mrs. R. A. Gray, which tract of land was sold at public sale by your orator, and purchased by Jacob P. Effinger, in the year 1863.

Your orator further sheweth that two-thirds of the purchase-money was paid in hand by said Effinger, and for the remaining third a bond was executed for $——, bearing date the ——— day ———, 18—, payable ————. Said bond remained unpaid up to 18—, when your orator placed the same in the hands of Dr. A. M. Newman, one of the creditors indemnified in said trust deed, and suit was brought at common law on said bond, and the said Effinger set up the plea of defence that the bond was payable in Confederate money, or was executed with reference to Confederate money as a

standard of value; all of which was not true, but a jury was empanneled at the ——— term, 18—, of the ——— court of Rockingham, to try the question, and they decided that the bond was not a Confederate bond, and was not liable to be scaled, and rendered a verdict for the full amount thereof, on which a judgment was entered, an office copy of which, from the records of said court, will be filed with this bill, marked "B," and prayed to be read as part hereof. No part of said judgment has ever been paid, and the same remains unpaid and unreversed to the present time.

Your orator herewith refers to the record of the case of James Kenney, trustee for use of A. M. Newman, *vs.* Jacob P. Effinger, before referred to, which he prays may be read as part of this bill.

In the year 18—, your orator conveyed the said land to said Jacob P. Effinger by deed with special warranty, retaining therein a lien on the land to secure the payment of said bond. A copy of said deed will be filed with this bill, if the same can be found, and will be marked "D;" but if the same or a copy thereof is in the possession of said Effinger, your orator calls upon him to produce it.

The said judgment is now for the benefit of your orator as
10 trustee, and to go to pay the creditors of said A. C. Bryan, and said A. M. Newman has no longer any interest therein. The object of this suit is to enforce the lien of your orator for said bonds and judgment on said land, or on the part remaining unsold and in possession of said Effinger, if it be sufficient. Your orator shews to the court that various lots have been sold off by said Effinger, leaving only some forty acres, with the buildings, now belonging to said Jacob P. Effinger. This forty acres and buildings was also sold by said J. P. Effinger after the other lots were sold, in the year 18—, to one A. M. Effinger, but that contract has since been rescinded, and the said forty acres and buildings now belongs to Jacob P. Effinger.

In tender consideration of the premises, and forasmuch as your orator is without remedy, save in a court of equity, he prays that the said J. P. Effinger, A. M. Effinger, and A. M. Newman be made defendants to this bill, and required to answer the same on oath; that proper process may issue; that a decree may be rendered enforcing the vendor's lien aforesaid on said land, that the same may be sold and your orator's debts satisfied, and that your orator may have such other further and general relief as the nature of his case requires, or to equity seems meet, &c.

JAMES KENNEY,
Trustee of A. C. Bryan, by Counsel.

WOODSON & COMPTON, *For Pl'ff.*

For Exhibit "A" see page 3 of other part of this record, there marked Exhibit "D." Exhibit "B" filed with bill.

County Court of Rockingham County. August Term, 1866.

JAMES KENNEY, Trustee of A. C. Bryan, (who sues for the use and at the costs of A. M. Newman),

vs.

JACOB P. EFFINGER.

Judgment for $7,067.70⅔, debt, with legal interest thereon from the 30th day of March, 1863, till paid; also $11.81 costs.

Copy. Teste: J. T. LOGAN, *Clerk.*

Docketed June 20th, 1866.

Teste: J. T. LOGAN, *Clerk.*

For Exhibit "D," filed with this bill, see bottom of page 84 other part of this record.

Again. September Term (Sept. 11th), 1873.

On motion of Jacob P. Effinger leave is given him to file his answer, which is accordingly done, and general replication thereto.

Answer of Def't, J. P. Effinger.

To the Hon. R. H. Turner, judge of the circuit court of Rockingham county, Virginia:

The separate answer of J. P. Effinger, to a bill of complaint exhibited against him in said court by James Kenney, trustee of Allan C. Bryan.

This respondent, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the
11 said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this respondent, answering, saith, that a judgment has been rendered against him by the circuit court of said county for the amount of the unpaid purchase-money due upon the land and other property in the complainant's said bill and exhibits mentioned.

And your respondent further says that he has obtained from the court of appeals of the State of Virginia a supersedeas to the said judgment of the said circuit court, and that he has given bond and security in conformity with the requirements of said supersedeas. And, therefore, your respondent prays that this suit may be stayed until the determination of the said cause in the said court of appeals of Virginia, inasmuch as your respondent has no doubt of the reversal of judgment aforesaid.

J. P. EFFINGER,
Per Counsel.

G. W. & F. A. BERLIN.

VIRGINIA,
Rockingham County, } *To wit:*

J. P. Effinger this day personally appeared before me and made oath that the facts stated in the foregoing plea are true to the best of his knowledge and belief.

L. W. GAMBILL, *Clerk.*

April 15th, 1873.

Plaintiff's Depositions in Suit at Law.

HARRISONBURG, *March 4th,* 1874.

WILLIAM FURRY, a witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by pl'ff's counsel. Were you the auctioneer who cried the sale of the farm of about 100 acres lying in or near the town of Harrisonburg, which was sold by James Kenney, as trustee of Allan C. Bryan, and purchased by Jacob P. Effinger in the spring of 1863?

Ans. Yes, sir; I was. The sale was 1863 or 1864; my impression is it was in the early part of 1863.

2d question by same. What kind of money was the land sold for?

Memo. Question objected to by defendant's counsel, as seeking to contradict or vary the written or printed terms of sale.

Ans. It was sold for whatever the money was then. I do not know that the money was mentioned particularly. It was sold for so much down. The balance was in payments. It was to be paid in whatever the currency was when it became due. The question was asked Kenney, whether he would not take it all down. He said he would take it all down, or so much of it down, as the creditors of Bryan's estate would take. My recollection is it was sold for so much down, whether the creditors would take it or not, the balance in payments. Kenney's remark was in answer to a question asked by some one.

3rd question by same. What kind of money was the last payment to be made in?

Memo. Question objected to by defendant's counsel, as an
12 attempt to contradict plaintiff's own witness, and as being a repetition of the former question.

Ans. Whatever was the currency when it became due, I suppose.

4th question by same. Is your recollection clear enough to say whether anything was said either by Judge Kenney or yourself, in announcing the terms of sale, that the printed terms were modified or changed?

Memo. Question objected to by defendant's counsel, on the ground that it is impossible or improper to vary or change the printed terms of sale, and as an indirect attempt to make the witness contradict himself.

Ans. My recollection is, nothing about the change of terms. My impression is that some remarks had been made. The terms were

read at this side of the house, and it seemed to be a slow sale then. There were some of the folks went through the house, and I walked around, and then the sale went on pretty briskly. There may have been some change made then, for I recollect I made the remark to the crowd that it was not worth while to make a great big fuss, for they would pay in shucks anyhow; to pitch right in.

Cross-examination:

Question by defendant's counsel. Who read the printed terms of sale to the crowd before the bidding commenced?

Memo. Question objected to by plaintiff's counsel.

Ans. I do not recollect precisely; it was read twice, I think. I think it was read by the clerk, whoever he was. I was not present when it was read first, and somebody called for it, and it was read twice or three times, I think.

And further this deponent saith not.

his
WILLIAM x FURRY.
mark.

JOHN H. WARTMAN, a witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by pl'ff's counsel. Were you present at the sale of the 100 acres of land made by James Kenney, trustee of A. C. Bryan, to J. P. Effinger, in the spring of 1863?

Ans. I do not think I was.

2d question by same. Were you present at any of the sales of the lands of A. C. Bryan made by Kenney, trustee?

Ans. Yes, sir; I was.

Memo. Question and answer objected to by def't's counsel, as irrelevant.

3d question by same. Did you purchase land at any of the said sales? If so, state the terms of the sales, to the best of your recollection.

Memo. Quest. objected to by def't's counsel, as irrelevant.

Ans. Yes, sir; I did. I purchased six acres on the western side of the town of Harrisonburg, being present and bidding upon the lands on the west side of town—other lands besides the six
13 acres I bought. My understanding was that $\frac{2}{3}$ of the money was to be paid in the then existing currency, the balance in such currency as the creditors of the estate would receive.

Memo. Answer objected to by def't's counsel, because it details witness' impression instead of the facts on which they were founded.

4th question by same. Did you give a bond for the $\frac{1}{3}$ of the purchase-money deferred; if so, has said bond been paid or not?

Ans. I did, and it has been paid.

5 question by same. If you had had the privilege of paying the

whole of the purchase-money in Confederate States treasury notes, would you have given any bond for the deferred payments?

Ans. I should not.

Cross-examination:

1st question by def't's counsel. When did the sale at which you made said purchase take place?

Ans. I think it was in 1863; my memory is not clear as to the time; I think it was after the sale of the Bryan land to Effinger; it was not on the day of the sale to Effinger, but I do not know how many days or weeks afterwards.

2d question by same. Where is the bond given by you for the deferred payment to which you refer?

Ans. It is in the hands of Woodson & Compton, attorneys.

3d question by same. Is that a plain bond for so much money, payable two years after date, or does it provide upon its face for payment in such currency as Bryan's creditors would receive when due?

Memo. Question objected by pl'ff's counsel, the bond itself being in existence is best evidence.

Ans. I do not remember about that; the only distinct memory I have is that I felt I was indebted to Bryan's estate in so much money in greenbacks.

4th question by same. Were you the editor of the Rockingham Register at that time?

Ans. I was.

5 question by same. Were the terms of sale of A. C. Bryan's property published in said paper by James Kenney, trustee?

Ans. Yes, sir.

6 question by same. Did that advertisement provide that the last payment on the lands should be made in such funds as Bryant's creditors would receive?

Ans. I do not think it did.

7 question by same. Were you present at any of the sales made by Kenney, trustee of A. C. Bryan, at which the printed terms were read while you were present?

Ans. I have no such recollection, tho' it may have been done.

8 question by same. Were you present when any other than the printed terms of sale were publicly announced?

Ans. I have no recollection of hearing any terms announced, or of hearing the terms read out at any of the sales.

14 And further this deponent sayeth not.

JOHN H. WARTMAN.

H. JOUETTE GRAY, another witness of lawful age, introduced on behalf of pl'ff, having been by me first duly sworn, deposes and says:

1st question by pl'ff's counsel. Were you present at the sale of the farm of about 100 acres, purchased by J. P. Effinger from James Kenney, trustee of A. C. Bryan, in the spring of 1863?

Ans. Yes, sir; I was present.

2 question by same. Who were the bidders upon the land?

Ans. I was one, bidding through my brother Algernon, Jacob P. Effinger, and some others, I do not recollect who.

3 question by same. What were the terms of sale according to your best recollection?

Ans. My impression is that there was a part to be paid in Confederate money and a portion to be left on the land.

4th question by same. How was the deferred purchase-money to be paid?

Ans. I do not know, sir; but I suppose in the currency when due. I have no recollection of hearing the terms of sale read or announced, but I do not think I was there when the sale commenced. I recollect that I stopped my brother Algernon, who was bidding for me, on the ground that a portion of the purchase-money was to be left on the land.

5th question by same. Would you have stopped him at the time you did, if the purchase-money had been all payable in Confederate money?

Ans. I think not, sir. I might have bid a little higher.

Cross-examination:

Question by def't's counsel. You say that you do not think that you were present when the sale began, and that you have no recollection of hearing the published or printed terms of sale read on the day of sale; how or from whom, then, did you learn the terms of sale to which you refer?

Ans. The terms must have been read, and I suppose I must have gathered what I knew of the terms from those around me. I cannot say from whom.

2 question by same. What was the condition of your eyesight then, and how long has it been so?

Ans. I could not see at all. I have been blind since I was nine years of age.

3d question by same. Did any person read the terms of sale to you prior to the sale, that you remember?

Ans. No, sir; not that I remember.

4th question by same. Is it not true then that all that you know about the terms of sale, whether printed or published, is what you learned from other persons?

Ans. Yes, sir; from other persons on the ground. I take it for granted I must have been correctly informed, but I cannot now recollect exactly what the terms were.

And further this deponent saith not.

H. J. GRAY.

HARVEY KYLE, another witness of lawful age, introduced on behalf of the plaintiff, having been by me first duly sworn, deposes and says:

1st question by pl'ff's counsel. Have you ever had a conversation with Jacob P. Effinger since the purchase by him of the 100 acres of land from James Kenney, trustee of A. C. Bryan, in regard to the kind of money in which the bond sued on in this case given

for the deferred payment of one-third of the purchase-money was to be paid; if so, when was it? State the time and place and the substance of the conversation.

Ans. It was prior to Nov., 1864, that I had a conversation with him on that subject; it was on the pavement between Hardesty's corner and the American Hotel, in the town of Harrisonburg. Dr. Newman was surety for Allan C. Bryan in the sum of $4,400.00, due me. Newman desired to relieve himself from *from* that debt. He learned, so he informed me, that he could get this deferred payment of Jacob P. Effinger's on the Bryan land of Mr. James Kenney, trustee of A. C. Bryan, and asked me if I would take that bond in satisfaction of my debt, or so far as it would go towards it. I suppose that my claim, with its interest, was larger than the debt of Effinger to Kenney, trustee. I informed the Dr. (Newman) that I would take it if Effinger would endorse upon it that it was not payable in Confederate money, or that it was not to be paid in Confederate money. In passing down the street I overtook Effinger, or we met, and I stated to him the conversation I had had with Newman, and he stated to me that he would endorse upon it that it was not to be paid in Confederate money.

Cross-examination:

Question by def't's counsel. Describe the bond to which you refer that Mr. Effinger was to make the endorsement of which you speak upon.

Ans. It was the bond given for the deferred payment on the Allan Bryan tract of land near town. The bond was for $5,000.00, I think; five thousand dollars was the sum spoken of. I never saw the bond.

2d question by same. Did Effinger make the endorsement?

Ans. He did not. I did not present the bond to him. I never got the bond of Dr. Newman. Dr. Newman's idea was to let the bond be transferred by Kenney to me without passing through his hands; this was not done. I did not get the bond at all.

3d question by same. Do you still hold the $4,400.00, or any other claim, against Allan C. Bryan's estate; if so, what amount?

Ans. No, sir; the $4,400 is paid. I still hold a debt against Allan C. Bryan's estate and Allan C. Bryan's sureties for $7,500.00 and interest.

16 4th question by same. Did you ever see and read the printed terms of sale of Allan C. Bryan's property made by Kenney, trustee? Had you seen the advertisement prior to the conversation to which you refer?

Ans. I never, to my knowledge, saw the terms of sale.

5th question by same. Were you at any of said sales made by Kenney, trustee?

Ans. I was not.

6th question by same. Did you know anything about the terms of the sale of said Bryan property?

Ans. I was from home when the sales took place.

Re-examined:

Question by pl'ff's counsel. Why was not the arrangement between you and Dr. Newman carried out?

Ans. I was satisfied with the debt I held. I believed the security ample, and shortly after the conversation had with Effinger I went to North Carolina and did not return until late in May or early in the next June. I guess it was the latter part of May.

2d question by same. State whether the debt of $7,500.00, which you now hold, is secured or not outside of Mr. Bryan's estate.

Ans. I think it is; I have a judgment against L. W. Gambill, Jno. Harvey Wartman, Jacob Bowman, and John K. Beery.

And further this deponent saith not.

H. KYLE.

JOHN HOPKINS RALSTON, another witness introduced in behalf of the pl'ff, being of lawful age and having been by me first duly sworn, deposes and says:

1st question by pl'ff's counsel. State whether you were present at the sale of the 100 acres of land, sold by Kenney, trustee of A. C. Bryan, to J. P. Effinger in the spring of 1863?

Ans. I was present.

2d question by same. Did you see or read the terms of sale before the sale; if so, were they written or printed and what were they?

Ans. I was at Mr. Bryan's some time previous to the sale, surveying his lands and dividing them, preparatory to a sale. Mr. Bryan spoke to me freely about his plans in dividing his lands, and the conditions on which they would be sold. I also saw the conditions, either written or printed, I disremember which, at his house on the night before the sale, or a few nights previous to the sale. These conditions were $\frac{1}{3}$ of the purchase-money cash, with the privilege of paying $\frac{2}{3}$ cash. The other $\frac{1}{3}$ to be paid at a time and in such funds as his creditors would receive.

3d question by same. Were these the terms which were announced at the sale?

Ans. I do not know, sir. I don't recollect. I have no recollection of the terms announced on the day of sale.

4th question by same. What is your best recollection on that subject?

Ans. My best recollection is that the lands were sold on the conditions I have stated above.

17 Cross-examination:

Question by defendant's counsel. Did you ever see and read the printed and published terms of sale of Bryan's lands by Kenney, trustee?

Ans. I don't know that I ever saw the published terms, but I saw the private terms I have referred to in Mr. Bryan's possession.

2d question by same. Were you present at the sale of the farm purchased by Effinger?

Ans. I was.

3d question by same. Did you hear the published terms of sale read by the clerk or announced by the crier?

Ans. I do not remember that I did.

4th question by same. Did you hear any terms of sale publicly read or announced by the clerk or crier, or by any one else, at that sale on that day?

Ans. I don't remember that I did.

And further this deponent saith not.

J. H. RALSTON, JR.

MARCH 6TH, 1874.

A. M. NEWMAN, a witness of lawful age, introduced on behalf of the plaintiff, having been first duly sworn, deposes and says:

Question by plaintiff's counsel. State all you know in reference to the sale of the 100 acres of land near Harrisonburg, which was sold by James Kenney, trustee for A. C. Bryan, in the spring of 1863, and was purchased by Jacob P. Effinger.

Ans. I was present at the sale, and saw Mr. Effinger making bids, and had some conversation with him at the time he was bidding.

2d question by same. What were the terms of the sale as to the kind of money to be received for the land?

Ans. I do not recollect that I heard the terms announced there. I know, from conversations with the trustee previous to the sale, what the terms were to be. Judge Kenney and myself had some conversation in regard to the sales of the lands of Mr. Bryan; I think immediately after he had made sale of one or both of the farms on the Shenandoah river. He was alarmed and apprehensive that he was incurring a liability in selling the lands of Mr. Bryan for Confederate money, apprehending that Mr. Bryan's creditors might not be willing to receive such money from him, and expressed a determination to proceed no further with the sales. I suggested to him to see those creditors and learn from them whether or not they would receive Confederate money in discharge of their debts or claims. He subsequently informed me that he had seen them, and learned from them that a sufficient number would receive Confederate money to make it safe for him to proceed to sell upon the terms that he would receive $\frac{2}{3}$ of the purchase-money in Confederate money, reserving $\frac{1}{3}$ to be paid in such money as Mr. Bryan's creditors would receive from him—those who would not agree to receive Confederate money.

3d question by same. Were the river lands sold before any
18 of the tracts belonging to A. C. Bryan near Harrisonburg?

Ans. Yes, they were. My impression is that the river lands were the first sold of all Bryan's lands. I know that the 100 acres of land sold by Kenney, trustee, to Effinger, was sold after the conversation I have related was had with Kenney.

4th question by same. Did you have any conversation with the defendant, J. P. Effinger, after said sale, in reference to the kind of money in which the bond sued on in this cause was to be dis-

charged. If so, state the time, place, and circumstances, and the conversation.

Ans. I had. I was security for Mr. Bryan in a bond to Harvey Kyle for $4,400.00. Anxious to relieve myself from liability as his security, I called to see the trustee to see whether I could not procure from him some of the bonds taken by him from the purchasers of Mr. Bryan's lands for the third deferred payment on their purchases. He assented to this, and agreed to let me have the bond on which this suit is based, and a bond on M. Harvey Effinger, which two bonds would about discharge the debt to Dr. Harvey Kyle and a debt to John D. Wise, upon which Thomas L. Yancey and J. N. Liggett were sureties. After having made this arrangement with the trustee I called to see Dr. Kyle, and told him the arrangement I had made with the trustee in respect to the J. P. Effinger bond, and asked him whether he would not take that bond and surrender the bond which he held against Mr. Bryan for $4,400.00, on which I was security. He replied, he would do so if Mr. Effinger would endorse upon his bond to Kenney, trustee, that it was not to be paid in Confederate money. I met Mr. Effinger on the pavement, near the door of the Heller store-house, (in Harrisonburg), informed him of these arrangements between myself and the trustee and Dr. Kyle, and asked him if he would make the endorsement Dr. Kyle required. He said he would do so. The time of this conversation I cannot recollect distinctly. It was, however, in the summer or fall of 1864. The arrangement between Kyle, Kenney, Effinger, and myself was not carried out, from the fact that shortly after the conversation I have stated, Kyle went South and did not return until after the close of the war. It was, however, carried out so far as the trustee and myself were concerned, by the trustee handing over to me the two bonds above described, for the purposes stated.

5th question by same. Was this arrangement ever proposed in regard to any other bond except the one in controversy in this suit, or did Judge Kenney hold any other large bond, amounting to thousands of dollars, against Jacob P. Effinger at the time, given for Mr. Bryan's land?

Ans. No arrangement was proposed by me to Kyle or Effinger with reference to any other than the bond in suit in this case. I do not think that Kenney, trustee, had any other bond on Effinger amounting to thousands of dollars.

6th question by same. Have you any interest now in this cause of any kind whatever—remote or otherwise?

19 Ans. None whatever. The debt on which I was security for Mr. Bryan was paid from a different source, and I was thereby relieved from all liability as such security, and therefore this bond has been by me returned to the trustee by statement in writing filed in this cause.

7th question by same. Did you hear the testimony of Allan C. Bryan, as delivered in court before the jury in the former trial of this case; if so, state what his testimony was in substance in regard

to the terms of sale of the lands sold by Kenney, trustee, to J. P. Effinger?

Memo. Question objected to by defendant's counsel, upon the ground of the inadmissibility of the evidence.

Answer. I was present and heard his testimony. My recollection of his testimony is that he stated that at all the sales, commencing with this sale of 100 to Effinger, the terms were, and were so announced, that the purchaser should have the privilege of paying ⅔ of the purchase-money in the then currency of the country, and that the other third was to be paid in such money as his creditors would receive.

Cross-examination:

Question by defendant's counsel. Can you state the substance of what Mr. Bryan testified to on the trial of said cause upon his cross-examination in reference to the private and published or printed terms of the sale?

Ans. I cannot.

Re-examination:

Question by plaintiff's counsel. Have you stated in substance Mr. Bryan's testimony in regard to the particular subject of the terms of sale, as announced at the sale?

Memo. Question objected to by defendant's counsel, as leading and suggestive, and as resuming the examination-in-chief.

Ans. I think I have.

And further this deponent saith not.

A. M. NEWMAN.

HARRISONBURG, *March 7th*, 1874.

L. W. GAMBILL, a witness of lawful age, introduced on behalf of the plaintiff, having been by me first duly sworn, deposes and says:

1st question by plaintiff's counsel. Were you present at the sale of the 100-acre tract of land near Harrisonburg, which was sold in 1863 by James Kenney, trustee, of A. C. Bryan, and purchased by Jacob P. Effinger; if so, were you present before the bidding commenced, and did you hear the terms of sale announced to the crowd; and, if so, state what the terms were?

Ans. I was present before the bidding commenced and during the sale. I heard the terms of sale announced by Mr. Bryan and the crier. The terms of sale were ⅓ down, or ⅔ at the option of the purchaser, and the last payment in such funds as Mr. Bryan's creditors would receive, the last payment of ⅓ to be paid in such funds as Mr. Bryan's creditors would receive.

20 2d question by same. Did you see and converse with the defendant, J. P. Effinger, at said sale? If so, state the substance of the conversation you had with him.

Ans. I was bidding for the land, and also Col. Gray and Robert

Gray and Mr. Effinger. Mr. Effinger was sitting on an old horse-power of a threshing machine, and he remarked to me, "Come and try me again." I replied to Mr. Effinger that it was not worth while to bid against him, because the back payment was as much as the land was worth. That is about the conversation I had with him at that time on that subject.

3d question by same. Do you recollect whether Mr. Effinger was there when the terms of sale were announced by the crier?

Ans. I have no recollection of seeing him until we commenced bidding on the land.

4th question by same. Who was the clerk at the sale?

Ans. Wm. McK. Wartmann.

5th question by same. Where is he now?

Ans. He is dead.

6th question by same. Was Wm. McK. Wartmann examined as a witness on the former trial of this cause; and, if so, did you hear him deliver his testimony?

Ans. To the best of my recollection, he was. I heard him deliver his testimony, but have no distinct recollection of what it was.

7th question by same. Was he examined in regard to the terms of sale that were announced at the sale?

Ans. I cannot remember.

8th question by same. Was John McQuaide examined as a witness on the former trial of this cause; and, if so, did you hear his testimony?

Ans. He was, and I heard his testimony.

9th question by same. Where is John McQuaide now?

Ans. He is dead.

10th question by same. State, if you can, the substance of John McQuaide's testimony given on that trial, stating first the point of the case upon which he was examined.

Ans. He was examined upon a conversation he had with Mr. Effinger. My recollection is that he said he had a conversation with Mr. Effinger, and that Mr. Effinger told him that the last payment was to be paid in good money—such as Mr. Bryan's creditors would receive.

11th question by same. Was Allan C. Bryan (now dec'd) examined as a witness on the former trial of this cause; if so, did you hear his testimony?

Ans. He was, and I heard his testimony.

12th question by same. Was he examined with reference to the terms of the sale which were announced at the sale? If so, state, as near as you can, the substance of his testimony on that point.

Ans. His testimony, as well as I can recollect, was that $\frac{1}{3}$ was to be paid down, or two-thirds at the option of the purchaser, and
21 the other $\frac{1}{3}$ to be paid in such funds as his creditors would receive.

Memo. Question and answer objected to by defendant's counsel, as inadmissible.

Question and answer in reference to the testimony of John McQuaide also objected to for same reason.

Cross-examination:

Question by defendant's counsel. Are you one of the sureties of Mr. Bryan in the unpaid Kyle debt?

Ans. I am.

2d question by same. Were the terms of sale announced by the crier the same that were read by the clerk?

Ans. I have no recollection of seeing the terms of sale or hearing them read by the clerk. My understanding was that the personal property was sold for Confederate money, and afterwards the real estate was put up and sold on the terms I heard announced by Mr. Bryan and Furry, the auctioneer. They were selling the personal property when I got there.

3 question by same. Do you remember seeing the printed terms of sale, or of hearing them read?

Ans. I did not; I have no recollection of seeing them at all.

4th question by same. Can Mr. Furry, who cried the sale, either read or write?

Ans. I have understood that he could not. I have been at sales frequently when the clerk would read the terms and Mr. Furry would announce them just as the clerk read them.

5th question by same. Do you remember the evidence of Mr. McQuaide and Mr. Bryan upon cross-examination?

Ans. I have no recollection of what they stated on cross-examination. I only recollect the substance of their testimony.

Re-examination:

Question by pl'ff's counsel. Have you stated the substance of the testimony of John McQuaide and Allan C. Bryan, taken as a whole, upon the particular points of their testimony with reference to which you have just been examined?

Memo. Objected to by def't, as leading, suggestive, and as examination-in-chief.

Ans. I have, as well as I can recollect their testimony.

2d question by same. Did either of them state anything on their cross-examination in contradiction of, or in conflict with, what you have just stated?

Ans. I have no recollection whatever of the cross-examination.

And further this deponent saith not.

L. W. GAMBILL.

A true copy.

J. H. SHUE, *Clerk.*

22 VIRGINIA, *to wit:*

Pleas before the circuit court of Rockingham county, at the October term, 1878.

JAMES KENNEY, Trusteee of A. C. Bryan, Complainant,
vs.
JACOB P. EFFINGER and HESTER, his wife, Defendants. } In Chancery.

Be it remembered that heretofore, to wit, at March rules, 1875, of the circuit court of Rockingham county, came the complainant, by his counsel, and filed his bill in chancery against the defendants, as follows, to wit:

To the Hon. R. H. Turner, judge of the circuit court of Rockingham county:

Humbly complaining, sheweth unto the court, your orator, James Kenney, trustee of A. C. Bryan, that on the — day of ——, 18—, the said A. C. Bryan, executed a deed of trust conveying to your orator certain lands in the county of Rockingham to secure certain creditors therein named, which deed was duly recorded in said county, and a copy thereof certified by the clerk is herewith filed, marked "D," and prayed to be read as part of this bill.

Your orator further sheweth unto the court that on the 30th day of March, 1863, your orator sold at public auction the home farm of said Allan C. Bryan, conveyed in said trust deed, situated near the town of Harrisonburg, Va., a portion of which is in said town, and Jacob P. Effinger being the highest bidder, became the purchaser at the price of $210.00 per acre. Two-thirds of the purchase-money, which by the terms were allowed to be paid in cash, was paid by said Effinger, and for the remaining payment the said Effinger executed his bond or single bill, obligatory, bearing date the 30th day of March, 1863, payable on the 30th day of March, 1865, for seven thousand and *ninety*-seven dollars seventy and two-thirds cents, with interest from date, which bond is herewith filed as part of this bill, marked Exhibit "B."

Your orator required no personal security for said bond, but retained a lien therein to secure said deferred payment.

Your orator further sheweth to the court that in the year 1863, on the — day of ——, he executed and delivered to said J. P. Effinger a deed, with special waranty, for said tract of land, containing about 100 acres, as aforesaid, and said deed was duly recorded in the clerk's office of said county, and was destroyed, together with the record thereof, by the Federal army under General Hunter, in June, 1864, with other records of said court. Your orator retained in said deed a lien to secure the payment of the said bond for $7,067.70⅔ and interest.

Your orator further sheweth unto the court that no part of
23 said bond has been paid, except two years' interest paid since the war.

Your orator is informed and believes that said J. P. Effinger has sold off considerable part of said land in lots to different persons,

and many of them are within the corporation of Harrisonburg, and he is informed that said Effinger still retains the Mansion House and some 40 acres of the land unsold. The object of this suit is to enforce your orator's lien on said land for said purchase-money and interest, and to that end, being remediless in the premises, save in a court of equity, he prays that said Jacob P. Effinger, and Hester, his wife, may be made defendants to this bill and required to answer each and every allegation thereof, and that proper process may issue; that said Effinger may be required to answer and state fully the names of the persons who have purchased portions of the said tract of land sold to him as aforesaid, together with the quantity sold to each and the order of priority of said sales; that a decree may be rendered enforcing your orator's lien on said tract of land, that a sale of the same, or of so much as is necessary to pay said lien, may be decreed, and that your orator may have such other, further, and general relief as the nature of his case requires, or to equity seems meet, and as in duty bound he will ever pray, &c.

JAMES KENNEY, *Trustee.*
By Counsel.

LIGGETT, WOODSON & COMPTON, *For Pl'ff.*

* * * * * * *

EXHIBIT B. Filed with Bill.

On the 30th day of March, 1865, with interest from this day, I promise to pay James Kenney, trustee for A. C. Bryan, seven thousand and sixty-seven dollars seventy and two-thirds cents, it being the deferred payment on the home farm of A. C. Bryan, bought by me.

Given under my hand and seal, this 30th day of March, 1863.

J. P. EFFINGER. [SEAL.]

Again. April Term, 1875.

JAMES KENNEY, Trustee, *vs.* J. P. EFFINGER.

Upon the motion of the defendant, Jacob P. Effinger and Hester V., his wife, leave is given them to file their answer in this cause within thirty days from the rising of this court.

The Answer of J. P. Effinger.

The answer of Jacob P. Effinger to a bill of complaint exhibited against him and Hester V., his wife, in the circuit court of Rockingham county, by James Kenney, trustee, for Allan C. Bryan.

This respondent, saving to himself the benefit of all just exceptions to said bill of complaint, for answer thereto, or to such parts thereof as he is advised it is material for him to answer, says: "That he admits the conveyance of a large amount of real and personal property in the year 1862 by Allan C. Bryan to James Kenney, in trust, to secure certain creditors as set forth in the said deed. And
24 that the home farm of Allan C. Bryan, which was embraced in said deed of trust, was sold at public auction by the com-

plainant to your respondent, as the highest bidder, on the 30th day of March, 1863, at the price of $210 per acre. That it is also true that the bond filed with the complainant's bill as Exhibit B was executed by this respondent for part of the purchase-money upon said home farm, but your respondent claims that according to the true understanding and agreement of the parties thereto, the said bond was to be fulfilled and performed in Confederate States treasury notes, and was entered into with reference to such notes as a standard of value, and your respondent utterly denies any statement or intimidation in the bill to the contrary.

That the price per acre obtained at the sale of that land, viz, $210, was and is far beyond the value of the same in good money. The sale occurred on the 30th day of March, 1863, and the cash payment of one-third and the first deferred payment of one-third were both received in Confederate States treasury notes, which then constituted the only circulating medium in that locality, and the bond "B" was to be fulfilled and performed in the same currency. The terms of sale as announced at the time and on the day and place of sale will appear and are set forth in a certified copy of the terms, upon which this identical tract, viz, the home farm of Allan C. Bryan, was sold on the day aforesaid, taken from the original paper now on file in the clerk's office of the county court of Rockingham county, in the common law cause of James Kenney, trustee, (use of A. M. Newman,) *versus* J. P. Effinger, which copy is filed herewith as a part of this answer, marked Exhibit X. The original will be filed if it can be gotten from the custody of the said court. This original is in the handwriting of Wm. McK. Wartman, who was the clerk of the sale, and is signed by James Kenney, trustee, the complainant, in his own handwriting, and is endorsed also by him with an acknowledgment of purchase of the home farm upon the terms within which acknowledgment is signed by your respondent. Your respondent claims that the said debt should be scaled in accordance with the principles applicable to Confederate contracts. Your respondent further says that Harvey Kyle and others who claim to have recovered judgments against Allan C. Bryan, and to have docketed the same before the deed of trust under which the complainant has acted, was admitted to record, have instituted their suit in chancery to enforce their alleged liens, and the same is now pending, in which they claim priority over the said deed of trust for their liens against the real estate formerly owned by Allan C. Bryan —of which the tract in controversy is part, though it was the tract first sold, and therefore the last to be subjected to said liens. That there is a similar creditor's bill now pending in the United States district court for the western district of Virginia. These liens amount to between $15,000 and $20,000, and your respondent claims that the complainant cannot proceed to enforce his claim against your respondent and against the real estate in controversy in this suit, until these liens are removed. Your respondent further claims that this whole matter of controversy ought
25 to have been determined in the suit of Allan C. Bryan's creditors against Allan C. Bryan's trustee, a cause which ought to

be heard with this, and this suit was wholly unnecessary, involving this respondent in useless and unnecessary costs. Your respondent does not admit that there was a lien retained in the deed made to him, and demands proof of the same. That it is true that your respondent has sold off a portion of said farm in town lots, but he still owns about 85 acres of the 100 acres purchased, and the part still held by him has all the buildings on it, and is, as your respondent claims, more than amply sufficient to meet the just demands of the complainant, and until it is seen to be actually necessary, he hopes that his vendees will not be disturbed and be subjected to the great expense attending upon having all these parties before the court. Your respondent further states that the controversy in relation to the character of the contract involved in the suit is not a new one. On the 26th of September, 1865, an action of debt was instituted in the county court of said county upon Exhibit "B" in the name of James Kenney, trustee, use of A. M. Newman, *vs.* Jacob P. Effinger, and thereupon such proceedings were had, that the cause finally was heard in the supreme court of appeals. A copy of the record in said cause is filed herewith as part of this answer, marked Exhibit "Y," and that court was unanimously of opinion that upon the facts certified the contract was plainly made with reference to Confederate States treasury notes as a standard of value, and was solvable in that kind of currency, and that the verdict of the jury is plainly contrary to the law and the evidence, and is unjust and oppressive, and ought to be set aside. A copy of the opinion and decree of said court is herewith filed as part of this answer, marked Exhibit "Z." To escape the effect of this ruling of the court of appeals upon a new trial of the common law cause, the complainant suffered a nonsuit, and it may well be a question whether he has any just right to maintain this proceeding in chancery under the circumstances. That while the judgment of the county court against your respondent was standing unreversed, A. M. Newman, the beneficiary plaintiff in said judgment, collected of your respondent by the stern process of law on the 24th of August, 1867, $448.34, and on the 1st of January, 1868, the further sum of $424.06, claiming the said amounts as the interest due upon said judgment for two years, collectible under the provisions of the "stay" law, and these are the payments modestly referred to in the bill "as two years' interest paid since the war." Your respondent claims credit upon the scaled amount of his indebtedness for the whole of the payment thus made. Your respondent further claims credit for $21.84, paid to Spencer A. Coe, U. S. tax collector, on the 2nd of April, 1866, being for the amount of United States direct tax upon said land which accrued previous to the purchase of the same by this respondent. Your respondent having answered, prays hence to be dismissed with his costs, &c.

J. P. EFFINGER.

VIRGINIA, *Rockingham County,* } *To wit:*

26 This day Jacob P. Effinger personally appeared before me, a notary public in and for my county aforesaid, and made oath to the truth of the foregoing answer to the best of his knowledge and belief

Given under my hand, this 28th of May, 1875.

WM. R. WARREN, *N. P.*

EXHIBIT X, referred to in above answer.

Terms of Sale of Property Belonging to A. C. Bryan, Sold by James Kenney, as Trustee, March 30th and 31st, 1863.

The real estate will be sold for one-third in hand, and the remainder in two equal annual payments, with interest on the deferred payments from the day of sale, with the privilege to the purchaser of paying the first deferred payment also in hand. The purchaser also to pay the tax on the land for the present year. All growing crops of grain reserved, as also the privilege to harvest and secure the same.

Terms for the personal property cash before the property is removed.

March 30th, 1863. JAMES KENNEY, *Trustee.*

The foregoing is a copy of a paper filed in the common law suits of James Kenney, trustee of A. C. Bryan, use of A. M. Newman, *vs.* J. P. Effinger, in which judgment was obtained at the May term of the county court, 1866.

Attest: J. T. LOGAN, *Clerk.*

"Endorsements in pencil."

I have become the purchaser of the Sugar Camp according to the within conditions, at the price of three hundred and thirty dollars.

JACOB SENGER.

I have become the purchaser of the home tract, according to the within conditions, at the price of two hundred and ten dollars per acre.

J. P. EFFINGER.

(Exhibit "Y" referred to in the above answer is a printed record, and will be furnished by counsel. It is a part of the records of the court of appeals.)

* * * * * * *

NELSON SPRINKLE, a witness of lawful age, introduced on behalf of the defendant, having been by me first duly sworn, deposes and says:

1 question by defendant's counsel. Were you present at the sales made of the lands of Allan C. Bryan by James Kenney, trustee, on the 30th and 31st of March, and the 16th of April, 1863?

Ans. I was.

2nd qustion by same. Did you hear the terms of sale announced; if so, what were they?

Memo. Question objected to by Liggett, of counsel for the complainant, on the ground that the question in regard to terms should be confined to the land mentioned in the bill.

Ans. One-third down with the privilege of paying two-thirds. If two-thirds were paid down, the residue was to be paid in two years, I think, with interest. I am not positive whether it was to be paid in one year or two years.

27 3d question by same. Were you a bidder and a purchaser at these sales?

Ans. I was a purchaser.

4th question by same. What were these sales?

Ans. I was present at the selling of the land that Jacob P. Effinger bought, and I was present at the sale of the lots, and was the purchaser of two of the lots.

5 question by same. Who made these sales, and by what authority?

Ans. James Kenney sold these lands, as trustee of Allen C. Bryan, under the deed of trust, a copy of which is filed with complainant's bill, marked "D."

6 question by same. Were these sales on the 30th and 31st March and the 16th of April, 1863, all made in pursuance of that deed?

Ans. That was my understanding of it.

7 question by same. Were the terms and conditions of sale the same at all of these sales?

Ans. I do not know of any change made, and I neither heard of any at the time.

8 question by same. With reference to what sort of money was this sale made to Jacob P. Effinger?

Memo. Question objected to by complainant's counsel, on the ground that it calls for inference and suppositions, and they must prove facts.

Ans. Payable in Confederate money; that was the currency at that time. I went there that day to bid on the same property myself, but it went higher than I was willing to pay for it in Confederate money.

9 question by same. At what price per acre was the land knocked off to Effinger?

Ans. To the best of my recollection, it was something over two hundred dollars. I do not know exactly.

10 question by same. Is that a Confederate or a good money price for that land?

Ans. Confederate.

11 question by same. What was the currency of the country at that time?

Ans. Confederate treasury notes.

12 question by same. In what currency were the first two-thirds paid by the purchasers at these sales—paid and received?

Ans. I bought two lots, about 30 acres, and paid it in Confederate money.

13th question by same. With reference to what sort of currency was the bond for the deferred ⅓ payment entered into?

Ans. It was payable in the currency when it fell due.

14th question by same. Was there any announcement on the day of sale of this "Effinger tract," or of any of the other sales, by the crier, or any one else having authority over the sale, that the deferred ⅓ was to be paid in such money as the judgment creditors of Allan C. Bryan would receive?

28 Ans. I did not hear of any. If I had, I should not have been a purchaser.

15 question by same. When did you first hear this pretension made, that there had been such an announcement?

Ans. I can't say. I did not hear any such announcement at the sales. I heard it spoken of some time after the sales that some of Mr. Bryan's creditors would not receive the money.

16th question by same. Do you remember any remarks made by the crier, or any one else having authority over the sale, made by way of inducing people to bid? If so, what were those remarks?

Ans. The crier came up to me and insisted on my bidding more on the land; that I could pay it in Confederate shucks, I think was about his language.

17 question by same. Did he make any such announcement to the crowd or not?

Ans. He spoke it out publicly.

18 question by same. Who was the auctioneer?

Ans. William Furry.

19 question by same. How near do you live to the "Magnolia Land," the farm in controversy, and how long have you known it?

Ans. I live in about four hundred yards of the line, I reckon. I have known it all my life; I am now 65 years old.

20 question by same. In what sort of condition was the house on this farm at the time of the sale?

Ans. In bad condition; the wall very much cracked.

21st question by same. Was any part of the building propped up with logs or not?

Ans. I think on the east side it was, sir.

Cross-examination:

Question by complainant's counsel. Was Confederate money depreciating gradually at the time this land was sold?

Ans. I do not know that it was; I do not recollect.

2d question by same. Was it increasing in value?

Ans. I was no broker; I did not keep the run of it.

3d question by same. By the terms of the sale, was not the purchaser privileged to pay ⅔rds of the purchase-money in cash in Confederate money, and not permitted to pay the other ⅓?

Ans. They were required to pay ⅓ or ⅔ds in cash and the balance in one or two years.

4 question by same. Was he permitted to pay the other ⅓ down?

Ans. The ⅓rd? I executed my note for the ⅓rd. I did not offer the money. I do not know whether the other ⅔ would have been received or not. I did not offer it.

5 question by same. Then you don't know whether the terms of sale permitted the purchaser to pay all down or not?

Ans. No, sir.

6 question by same. Did you hear the terms of the sale of the farm purchased by Jacob P. Effinger announced? If so, by whom?

Ans. I did; by the crier. It was announced by the crier
29 that the purchaser had the privilege of paying ⅔ds of the money down.

7 question by same. Is there a chancery suit now pending against you and undecided, involving the same issue between you and James Kenney, trustee, as is involved in this case?

Ans. There are two chancery suits involving the land purchased by me from Kenney, trustee, one by Kenney, trustee, and one by Harvey Kyle, a judgment creditor of A. C. Bryan, dec'd.

8 question by same. How high did you intend to bid on the property in controversy in this suit when you went to the sale of said property by Kenney, trustee?

Ans. I think the highest bid I made was $144.00.

9 question by same. Was Maj. L. W. Gambill's bid on said property more than yours, or less?

Ans. I don't know.

10 by same. Did you not advise him to bid more after you had stopped bidding?

Ans. I do not recollect advising him at all.

And further this deponent saith not.

NELSON SPRINKLE.

D. M. HUFFMAN, another witness of lawful age, introduced on behalf of the defendant, having been by me first duly sworn, deposes and says:

1st question by defendant's counsel. Were you present at the sales made by Kenney, trustee, of the lands of A. C. Bryan on the 30th and 31st of March and the 16th of April, 1863?

Ans. I do not recollect the dates. I was present at the sale of the home farm—the farm in controversy.

2 question by the same. Did you hear the terms of sale announced at the sale; if so, what were they?

Ans. I do not think I did, sir. I was no land buyer, and paid no attention to it.

3d question by same. At what price was the farm knocked off to Jacob P. Effinger?

Ans. I don't recollect now; I think about $200 per acre.

4th question by same. Was that a Confederate or a good money price for the land?

Ans. As I did not hear the terms, I could not tell, but I inferred from the way they bid it was Confederate. Men seemed to bid very carelessly.

5th question by same. In what condition was the land, fences, and improvements at the date of the sale?

Ans. I paid very little attention to the improvements or fencing on that day. I merely rode out there, and paid no attention to the land or fences. I did not want to buy, and was not interested at all.

6th question by same. What was that land worth on the day of sale in such money as was good before the war?

Ans. * * * * * *

in such money as was good before the war?

Ans. I think $50.00 would have been a good price for it at any time in good money, either on the day of sale or previous to that time.

Cross-examination:

Question by compl't's counsel. Have you ever heard Jacob P. Effinger place a value upon this farm; if so, what is the highest price you ever heard him say it was worth?

Ans. I have no recollection of ever having heard him place an estimate upon the whole farm. I have heard him speak of the value of the lots which he sold off of it (the lots fronting on East Market street, Harrisonburg), for building purposes.

2d question by same. Is not the larger part of it within the corporation of Harrisonburg?

Ans. The whole of it is in the corporation at this time. It was not on the day of the sale though. The corporation has been extended since the —— of sale.

3d question by same. Did you ever hear Jacob P. Effinger place an estimate upon the value of all his property, or say what he considered himself worth?

Memo. Question objected to by defendant's counsel, as irrelevant and obviously improper.

Ans. I don't think I have, sir, directly. I have indirectly. I have heard others say, but he never told me what he was worth.

4 question by same. What proportion did this farm bear to the whole of his property?

Memo. Question objected to —— defendant's counsel; same reasons as last objection.

Ans. I heard him say he owned the Ralston farm. That and the farm in controversy were the only two I ever heard of his claiming.

5th question by same. Is not one acre of the Bryan farm worth four of the Ralston farm, considering its quality and location?

Memo. Same objection as to two last by def't's counsel.

Ans. I can't say. I am not acquainted *from* the Ralston farm.

6th question by same. How far is the mansion house on the Bryan farm from the court-house in Harrisonburg?

Ans. I suppose 400 or 500 yards, in a straight line.

7th question by same. Is not a considerable portion of this land well situated for building purposes, and has not Mr. Effinger sold off

a considerable number of building lots on one of the principal streets of Harrisonburg?

Ans. He has sold off several on East Market street, sir, and some on the street leading out to his house (I do not know the name of the street), and he has opened some new streets. I do not know what their names are.

Memo. Question and answer objected to by defendant's counsel as irrelevant.

Re-ex'd:

31 Question by defendant's counsel. When did Mr. Effinger make sale of the town lots of which you speak, and when did you hear him speak of the value of the same?

Ans. I don't recollect what year it was but it was when there was some excitement about town lots and prices were high. Lots were very high at that time, and I thought sold for more than they were worth.

2d question by same. Was this after the war?

Ans. Oh, yes, sir; in 1868 or 1869, I think, sir.

3d question by same. What caused the excitement about town lots?

Ans. I could not tell about that.

4th question by same. Had the town increased in size and importance, or not?

Ans. It had, sir; and was in a flourishing condition and prosperous. There were Lowenbachs's addition, Zirkle's addition, and Effinger's addition to the town, and lots selling high in all these places.

5th question by same. When was the railroad completed to Harrisonburg, and what effect did that have upon Harrisonburg, and what effect did its anticipated completion have?

Ans. I don't recollect what year it was completed. The expectation was that we would have a city here. We had a corporation court, and Joe Price was mayor. Things were flourishing here then.

6th question by same. Does not the corporation of Harrisonburg take an extensive domain?

Ans. Very.

7th question by same. How long have you known the Bryan land, the farm in controversy?

Ans. I have known it about 30 years.

And further this deponent saith not.

D. M. HUFFMAN.

* * * * * *

THOMAS W. BASFORD, a witness of lawful age, introduced on behalf of the defendant, having been by me first duly sworn, deposes and says:

1st question by def't's counsel. Were you present at sales made by James Kenney, trustee, of the lands of A. C. Bryan, on the 30th and 31st of March and the 16th April, 1863?

Ans. I was present at the sales; I disremember whether I was at all of them, but think I was.

2d question by same. Did you hear the terms of sale announced; if so, what were they?

Memo. Question objected to by compl't's counsel, witness having stated his inability to say whether or not he was present at the sale of the property involved in this suit—"the home farm."

Memo. Def't expects to answer this objection by showing that the terms of all sales were the same.

Answer. I heard the terms of sale. I understood the terms of sale before I went there, I thought. I was with Mr. Farneyhough, who was a purchaser at one of the sales. The terms, as I un-
32 derstood it were one-third in hand and the balance in two equal annual payments. One-third was to be paid in cash, or the purchaser to have the privilege of paying ⅔rds cash.

3d question by def't. Who announced the terms of sale?

Ans. Wm. Furry.

4 question by same. Were you present at the sale of the home farm?

Ans. Well, I won't be positive about that; I think I was.

5 question by same. Were the terms of all these sales the same?

Memo. Quest. objected to by compl't's counsel, because witness can't say certainly he was there.

Ans. I so understood it; I don't know.

6 question by same. With reference to what sort of money were these sales made?

Ans. I understood it at the time Confederate money.

7 question by same. What induced you to believe this?

Answer. The ⅔rds, which they had the privilege to pay down, of course would be in Confederate money.

8 by same. Did you hear any remark at these sales by the auctioneer or by James Kenney, trustee, in relation to the sort of money with referenee to which these sales were made?

Ans. I did not hear anything from Judge Kenney that I recollect of, but I did from the auctioneer. The auctioneer went on frequently to say it was "Confederate shucks," and making light of the money it was to be paid in.

9 question by same. Did you hear any terms other than those you have stated above?

Ans. I don't think that I did.

10 by same. Was any announcement made on the days of these sales that the deferred payment of one-third was to be made in such money as the judgment creditors of Allan C. Bryan were willing to receive?

Ans. I don't think I heard such announcement.

11 by same. Was there any such talk or any such impression among the bidders on the days of the sales?

Ans. I do not know whether there was or was not. I did not hear any. If I had, Farneyhough would not have bid.

12 by same. For what purpose were you present?

Ans. As Farneyhough's friend. Farneyhough went there for the purpose of purchasing, and I went with him.

13th by same. Have you any personal interest in this matter?

Ans. Not any at all.

14 by same. Did you hear anything said on these days with relation to the judgment creditors of Allan C. Bryan?

Ans. I might or might not. I don't recollect positively. It has been a long time, and I have not taxed my mind with every little thing that occurred there that day.

15 by same. Would you have permitted Farneyhough to become a bidder at these sales if it had been announced that the de-
33 ferred payments were to be made in good money or in such money as the judgment creditors of Allan C. Bryan would receive?

Ans. I would not.

16th by same. At what sort of prices were the lands sold at these sales—Confederate or good money?

Ans. I would have considered it Confederate?

17 by same. How would the deferred payment of one-third on the tract which Farneyhough purchased, or on the Effinger land either, have compared with the value of these two tracts of land, respectively, on the day of sale, in good money?

Ans. I can't say so far as Mr. Effinger's land is concerned, but so far as Mr. Farneyhough's land is concerned I would not have paid the back payment in good money for it in good money.

18 by same. Why can't you say as to Mr. Effinger's land?

Ans. I don't think myself judge enough of lands to estimate the value of that tract.

Cross-examined:

Question by J. N. LIGGETT, att'y for compl't. Did Mr. Farneyhough bid on the home farm?

Ans. No, sir; I don't think he did.

2d by same. The home farm had already been sold, had it not, before the day when the land was sold that Mr. Farneyhough bought?

Ans. I am not prepared to say.

3 by same. Who else bid on the home farm besides Mr. Effinger?

Ans. I am not prepared to say.

4 by same. If I understand you correctly, you do not remember that you were present at the sale of the home farm?

Ans. I did make that statement. I won't be positive that I was present.

5 by same. In what money did you understand, at these sales, that the last payment was to be paid?

Ans. In current funds.

6 by same. In referring to the case of James Kenney, trustee, *vs.* Nelson Sprinkle, &c., I perceive, in answer to eighth question touching these sales, that you said thus: "I understood it that the last payment was to be made in such money as was current when that

payment fell due; that is the way I took it, and that was the general conversation there." Do you still adhere to that answer?

Memo. Question objected to by defendant's counsel, the extract given in the question not giving all the statement of witness in reference to that subject, and therefore calculated to mislead.

Ans. I do.

7 question by same. Was that so, according to your best knowledge, and is it so with reference to this case?

Ans. Yes, of course; I answer the same.

8 by same. What did Farneyhough pay for his land?

Ans. To the best of my knowledge, he paid $1,800.

9 by same. About how much land was it; what sort of
34 land; how far from Harrisonburg, and what sort of roads from it to the town?

Ans. I disremember how many acres, though I have heard; it is about ¾ of a mile from the court-house; miserable road at that time from the property to town. I consider the land fair average land with the land about here generally.

10th by same. Wasn't it about eight acres?

Ans. It might have been. I could not say positively what the quantity of land was.

Red-ex'd:

Question by defendant's counsel. Were there any improvements on this land?

Ans. There were. There was a house and stable, and there may have been some little out-houses. I did not notice particularly at the time.

2 by same. Was it distinctly announced on the day of sale that the purchaser was to take the hazard of paying the deferred one-third in gold or silver, if that was the currency, or in whatever else was current, or was that the inference you drew from the terms of sale, as stated by you above?

Memo. Question objected by complainant's counsel, as leading and suggestive.

Ans. As I have stated above, my understanding was that it was to be paid in whatever funds was current at the date.

3 by same. Did you draw that as an inference from the terms which you have stated above were announced, or was that announced in addition to what you have stated above; in other words, was it an announcement or an inference from what was announced?

Memo. Complainant's counsel objects, for same grounds stated to last question.

A. As an inference from the terms announced, as stated by me above.

2nd cross-examination:

Question by complainant's counsel. Was it not about what was said?

Memo. Question objected to by def't's counsel.

Ans. Yes, sir.

And further this deponent saith not.

THOMAS W. BASFORD.

* * * * * * *

ANTHONY HOCKMAN, another witness of lawful age, introduced on behalf of the defendant, having been by me first duly sworn, deposes and says:

1st question by defendant's counsel. Were you present at the sales made of Allan C. Bryan's real estate by James Kenney, trustee, on the 30th and 31st of March and 16th of April, 1862?

Ans. I was there when the home farm was sold.

2nd question by same. Who was the crier?

35 Ans. Wm. Furry.

3d question by same. Did you hear the terms and conditions of sale announced; if so, what were they?

Ans. I did not hear them.

4 question by same. What did you understand to be the terms and conditions of sale?

Memo. Question objected to by J. N. Liggett, counsel for compl't, as illegal.

Ans. My impression was that it was sold in three payments, and that it was sold for Confederate money. The first payment was ⅓ to be paid down, ⅓ in twelve, and ⅓ in 24 months.

5th question by same. From whom did you get this understanding?

Ans. From those who were present there at the sale and were speaking of it.

6th question by same. Was that the general impression and understanding among the bidders?

Memo. Same objection as to fourth question made by complainant's counsel.

Ans. That was the impression made upon my mind by those with whom I was in conversation.

7th question by same. Can you remember any remark made by the crier, or any one else having authority over the sale, as to the kind of money in which the land was to be paid for?

Ans. Mr. Furry was soliciting bids and urging them to bid up; that it was to be paid for in Confederate money.

8th question by same. Was there any announcement that day by the crier, or any one having authority over the sale, that the deferred payment of ⅓rd was to be paid in such money as the judgment creditors of Allan C. Bryan would receive?

Ans. Not that I recollect of, sir.

9 question by same. If there had been such announcement would you not have heard it?

Ans. I think I would, sir.

10 question by same. What sort of price was it at which the land sold; Confederate or good money?

Ans. I consider it sold for Confederate money from the information that I gathered on the ground. I regard the price paid as a Confederate price.

11 question by same. Was that price the value of the land in Confederate money?

Ans. Yes, sir; I suppose that was all it would bring in Confederate money.

Memo. By Liggett, counsel for complainant. Any remarks of the auctioneer used in crying the sale not given in full, and in the presence of those having control over the sale, are objected as evidence.

Cross-examined:

Question by complainant's counsel. How long was that sale being cried?

36 Ans. Some two or two and a half hours, according to the best of my recollection.

2 question by same. When did it commence?

Ans. I was not there when it commenced.

3 question by same. Who were the bidders?

Ans. Col. Gray and Effinger, and perhaps others; I don't recollect who else.

4 question by same. Who did you talk to about the terms?

Ans. I don't recollect who.

5 question by same. Do you know whether Furry referred, when he spoke of Confederate money, to the down payment, or whether he referred to the last payment?

Ans. I don't know; I don't know which he referred to.

6 question by same. Was L. W. Gambill a bidder at the sale?

Ans. I don't recollect, sir.

7 question by same. Did you stay where they were selling the land all the time they were there?

Ans. Yes, sir; I was there until it was knocked off.

8 question by same. Taking into consideration the fertility of this land, its location, which you will describe, its susceptibility of being cut up into town and building lots, the improvements, good barn and outhouse on it, don't you think that just before the war commenced the land could have been so sold by division or otherwise as to bring at any rate $150 per acre?

Ans. Yes, sir; I believe that by having it cut up into building lots, the most of it would have brought $150 per acre. Some of it, the back part of it, might not. Owing to its proximity to the court-house, it would be valuable. The nearest portion of the farm is within one-half mile of the court-house.

9 question by same. Is not the house within less than a quarter of a mile of the court-house?

Ans. It is near about that; I hardly think it is so near. Between

¼ and ⅜ of a mile perhaps. By the streets I would say between ⅜ and ½ mile.

10 question by same. What distance is the nearest part of the tract lying along the street leading to the Red Hill from the court-house?

Ans. Between ¼ and ⅜ of a mile, I think.

11 question by same. Does not all that tract now lie within the corporate limits, and did not, at the time of the sale, a considerable portion of it lie within the corporate limits of the town of Harrisonburg?

Ans. I am not acquainted with the old corporate line. I don't think much of it did lie within the corporate limits. It now lies entirely within the corporate limits.

12 question by same. Was not a portion of the town consisting of respectable buildings, Strayer's, a fine brick house; Shand's brick house, a good brick house, the buildings of less dimensions, lying very near this tract?

37 Ans. Yes, sir; they were within some 300 or 400 yards of the property.

13 question by same. Is either Strayer's or Shand's more than 100 yards from the tract?

Ans. Yes, sir; I think they are further than that.

14 question by same. Did not Way's house and lot adjoin this tract?

Ans. Yes, sir.

15 question by same. Do you remember when Mr. Effinger sold lots off of this tract?

Ans. I don't believe I recollect the year he sold them.

16 question by same. Do you know how the prices range?

Ans. The prices ranged from $130 to $140 per lot; the lots something like ⅓ and ½ acre, I think. I do not know the size.

17 question by same. Was there not a first-rate Switzer barn on the farm at the time of the sale by Kinney, trustee?

Ans. There was a tolerably good barn on the farm, but not new by any means.

18 by same. Were there not other good outhouses?

Ans. No; the outbuildings were not very good, except one log building that stood there, which was a tolerably good house.

19 question by same. Was not the main building of brick, and any damage which may have occurred to it susceptible of being repaired?

Ans. The building was brick, very much out of repair. The north wall of the L was propped up. The south end of the main building was cracked from bottom to top; the crack at the top was about 1½ inches wide. The back porch was rotted down; the roof was very rotten. The kitchen, which was wood, was also rotten.

20 question by same. Did you repair this house for Mr. Effinger?

Ans. No, sir.

21 question. Was not the land very fertile and in good heart?

Ans. The land was considered a fair quality of land.

Memo. Defendant's counsel objects to all questions and answers in regard to the condition and value of the property since the day of sale; are objected to as irrelevant and improper.

Re-examined:

Question by defendant's counsel. In making the repairs to the house on this land, state what had to be done to the house.

Ans. A portion of the walls of the front, and also a portion of the walls of the back building had to be taken down and rebuilt, and a new roof put on, and a good deal of plastering, patching, and painting had to be done.

2d question by same. Could any such sale of lots as was made by Effinger since the war have been made off of that land previous to 1863? Did the increase of the town require it?

Ans. I don't think the lots could have been sold off before that time as they have been since. There did not seem to be much demand for lots before the war.

3d by same. Could any portion of that land of any consequence have been sold off as lots previous to 1863?

38 Ans. Oh, yes; there could if there had been purchasers.

4th question by same. Would there have been purchasers previous to 1863?

Ans. I don't know about that.

5 question by same. Selling that land as a whole, as it was sold in 1863, with such a house on it as there then was, what was it worth in good money per acre at the time of sale, and what would it have brought?

Ans. I don't think I can answer that question, not being familiar with the sales of land.

6th question by same. Would it have brought $150.00 per acre, or anything like it?

Ans. My impression is it would not, sir.

7 by same. Would it have brought $50.00 per acre in good money?

Ans. Yes, sir; I think it would.

8 question by same. Would it have brought $75.00?

Ans. I don't know that it would have brought $75.

And further this deponent saith not.

A. HOCKMAN.

* * * * * * *

WM. FARNEYHOUGH, witness for defendant, having been sworn, deposes and says:

Question by defendant's counsel. State whether you were present at the sales of Allen C. Bryan's land, made by James Kenney, trustee, on the 30th and 31st March, and the 16th of April, 1863?

Ans. I was not. I was present on the 1st April, 1863, when the lands north and west of Harrisonburg were sold; that is my recollection.

2d by same. Were you present at the sale of the home farm which Jacob P. Effinger bought?

Ans. I was there when the personal property was sold. I went away before the land was offered.

3d question by same. Were you a purchaser of any of those lands on the day to which you have referred?

Ans. I was on the 1st day of April, 1863?

4 question by same. What has become of the land you purchased?

Ans. It has been sold for a judgment lien prior to Bryan's purchase; superior to Bryan's title. The judg't, I think, was against Hunter (Bryan's vendor).

5 question by same. Have you any interest in this or any similar controversy?

Ans. None whatever.

6 question by same. What were the terms and conditions on which the Bryan lands were sold on the day to which you refer?

Memo. Question objected to, as illegal, by Liggett, counsel for complainant.

Ans. It was put up and sold for Confederate money, as I understood it, ⅓rd down or ⅓rds, if it suited the people who pur-
39 chased, and the balance in 2 years in whatever was current, with interest.

7 question by same. Who announced the terms of sale?

Ans. I asked Kenney myself, and he told me what the terms was, and Furry, the auctioneer, hallooed it out all the time there.

8th question by same. Did you hear the crier, or any one else having authority over the sale, announce that ⅓, payable in two years, would have to be paid in such money as the judgment creditors of Allan C. Bryan would receive?

Ans. No, sir; I did not. If I had heard such a thing as that I would never have bid on it. I understood it was for Confederate money, and nothing else.

9 question by same. Did you hear any such remark by any person on the day of sale?

Ans. Oh, no, sir; no, sir; by nobody.

10 question by same. Did you hear the crier make any remarks by way of inducing the people to bid; if so, what were they?

Ans. "Well, he was persuading everybody to buy; that it was going for Confederate money, and nothing else."

11 by same. How many acres were there in the land you bought, and what was the price?

Ans. Something over seven acres, sold in the lump. I paid, or was to pay, nineteen hundred and fifty (1950) dollars for it.

12th question by same. Would you have bid that amount if you had understood that ⅓rd was to be paid in good money?

Ans. No, sir; I would not. I would have thought the ⅓ more than it was worth, or as much, anyhow.

13th by same. Was it distinctly told you on the day of sale that the purchaser must take the hazard of paying the ⅓rd in whatever was current when it came due, or was nothing said about this, and you made that inference—the inference that it was thus to be paid?

Memo. Question objected to by complainant's counsel, as leading and suggestive.

Ans. Well, I heard a good many say, and I asked a good many, and they all said it was nothing but Confederate money that it was sold for. All seemed to have that opinion, and I took the same view of it myself.

14th question by same. Do you know the home farm purchased by J. P. Effinger? If so, state what was its value in good money before the war and on the day of sale.

Ans. I do know the farm. I suppose on the day of sale—it would not have brought over $50.00 on the day of sale, if that, in good money.

Memo. Leave is granted to William B. Compton, att'y, to recall the witness for cross-examination at any time before the January, 1876, term of this court.

And further this deponent saith not.

his
WILLIAM x FARNEYHOUGH.
mark.

* * * * * * *

40 J. GAMBILL SPRINKLE, a witness of lawful age, having been by me first duly sworn, deposes and says:

Question by def't. Were you present at the sales of Allan C. Bryan's real estate, made by Kenney, trustee, on the 30th and 31st of March and the 16th of April, 1863?

Ans. I was there a part of the time.

2 question by same. Were you present at the sale of the home farm and of the lands east, west, and north of Harrisonburg; if so, did you hear the terms of sale announced, and what were they?

Ans. I was present at the sale east and north of town, and I think a part of the time west of town. I got to the *to the* sales too late to hear the terms of sale announced on each day. They were crying the lands when I arrived.

3d question by some. Did you enquire as to the terms and conditions of sale; if so, of whom did you enquire, and what was the result?

Ans. I did. I enquired of various parties, having had in view the purchase of some of the lots. I do not recollect of any one particular of whom I made enquiry as to the terms, except my brother, Nelson Sprinkle, who had arrived on the ground before I did, and who became a bidder and purchaser at the sales. I enquired of others, but do not now recollect their names. My brother Nelson and others of whom I enquired told me that the lands were to be sold in three payments—one-third down and the balance in two equal payments, the purchasers having the privilege of paying two-thirds down.

Question and answer objected to by complainant's counsel, as illegal.

4 question by same. What kind of money was the land sold for?

Ans. Confederate money is what it was sold for at that time; that is to say, the ⅔ was paid in Confederate money, and the balance, the general understanding was—I heard no specification of the kind of currency it was to be paid in—was to be paid in whatever money was current when it fell due.

5 question by same. What was the general impression as to the kind of currency which would be in use two years from that date, if the war was still going on?

Question objected to by complainant's counsel, as illegal and calling for hearsay.

Answer. I don't know that I heard any expression of opinion on the subject if the war should have been going on when the last payment fell due. I would have expected to pay in Confederate money.

6 question by same. Was any announcement made, or was there any talk or impression among the bidders on the days of these sales, that the deferred payment of ⅓ was to be made in such money as the judgment creditors of Allan C. Bryan might elect to receive?

41 Ans. I heard nothing whatever of the kind.

7 question by same. Was there any announcement, or was there any talk or impression among the bidders that the deferred payment was to be made in good money?

Ans. My impression was that it was to be in such money as was current. I did not hear any talk among the bidders of its being paid in any particular kind of money, further than there seemed to be a doubt in the minds of the crowd as to what the currency would be at the end of two years. I did not bid on any of the property at the sales. I bought some of the same property of my brother, Nelson Sprinkle, who became a purchaser at the sales by Kenney, trustee. I bought from him at the same price and on the same terms of sale. The property I bought of my brother Nelson I have disposed of long since.

8 question by same. Was there any announcement made by the crier, James Kenney, trustee, or by Allan C. Bryan, that the last deferred payment was to be made in such money as Mr. Bryan's creditors would receive?

Ans. Not that I heard of, sir.

9 question by same. Have you any interest in this or any other controversy relating to the Bryan land?

Ans. None, whatever.

10 question. Do you know at what price per acre the home farm was sold to J. P. Effinger?

Ans. I knew at the time, but have now forgotten. I recollect that I thought it a big price.

11th question by same. Would you say that $210 per acre for that land on the 30th day of March, 1863, ⅓ cash and the residue in one and two years from date, with interest from date, would be a Confederate or a good money price?

Ans. At that time I think it would have been a Confederate price.

12th question by same. Would you or would you not consider it a big price in Confederate money at that time?

Ans. I thought at the time that he purchased it that he paid a big price for it.

And further this deponent saith not.

J. G. SPRINKLE.

* * * * * *

E. J. SULLIVAN, a witness of lawful age, introduced on behalf of the defendant, having been by me first duly sworn, deposes and says:

1st question by defendant. Were you present at the sales of lands of Allan C. Bryan, made by James Kenney, trustee, on the 30th and 31st of March, and the 16th April, 1863, at the sales of the home farm of said Bryan and of his woodlands in the ridge?

Ans. I was. I don't remember dates, but I was present at the sale of the home farm and of the woodlands in the ridge.

2 by same. Did you hear the terms of sale announced; if so, what were they?

42 Ans. I did. I was there when Mr. Furry, the auctioneer, announced them. The terms of the sale, as announced by Mr. Furry, were one-third cash, one-third in twelve months, and one-third in two years, the purchaser having the privilege of paying two-thirds down if he chose.

3 question by the same. Were the terms the same at the selling of the home farm and of the woodland?

Ans. They were. I was there for several days waiting for the woodland to be sold. I bought some of the woodland.

4 question by same. State whether or not the crier announced the kind of money in which the land was to be paid for; if so, what kind of money was it?

Ans. I did not hear him announce what sort of money it was to be paid for in, but I heard him frequently urging the bidders to "bid up," that they were paying for it in "Confederate shucks."

5 question by same. Who became the purchaser of the home farm, and at what per acre?

Ans. Jacob P. Effinger it was knocked off to, as well as I recollect, at $210 per acre.

6th question by same. Did you consider that a big Confederate price, or a good money price for that land?

Ans. I thought it was a good Confederate price for it.

7 question by the same. Did you hear any other terms of sale announced at the sale of the home farm, purchased by J. P. Effinger, or at the sales of woodland, than these you have named?

Ans. No, sir; I did not hear any announced other than the terms I have mentioned.

8 question by same. Were you a purchaser of any of the Bryan lands sold by James Kenney, trustee?

Ans. I was. I bought twenty acres of woodland in Chestnut Ridge.

9 question by same. Have you any interest in the question involved in this suit?

Ans. No, sir; I have not. I paid the ⅓rd down on the land I bought, in Confederate money, and the other third I agreed to pay in current money since the war. It was only $166.66⅔, and I preferred to pay it to having a lawsuit about it.

Cross-ex'd:

Question by compl't's counsel. What time did you get to the sale of the home farm?

Ans. I got there the morning of the sale.

2 X question by same. Did you hear terms announced?

Ans. Yes, sir.

3d X question by same. Was not the third payment expressly excluded from being paid in Confederate money down?

Ans. I was present when Mr. Furry called up the crowd and announced the terms of the sale. The third payment was not expressly excluded from being paid down in Confederate money. I did not hear anything of it if it was, and I was standing close by.

43 4 question by same. Were not the terms ⅓ down, without designating what kind of money, the balance in one and two years, with interest, equal payments, with the privilege to the purchaser of paying all in Confederate money?

Ans. No, sir; I would have paid for all of mine in Confederate money if they had been. The terms announced by Mr. Furry were identically these: ⅓ down, ⅓ in twelve months, and ⅓ in two years, with interest from date, with the privilege of paying ⅔ down.

5 question by same. Now were you not allowed to pay the ⅔ down, and not allowed to pay the other ⅓ down?

Ans. The terms of the sale were that the purchaser might have the privilege of paying the ⅔ down, and there was nothing said about the paying of the other ⅓.

6 question by same. Was not your perfect understanding of it all along that this third and last payment was to be made in good money?

Ans. No, sir; I would not have obligated myself to pay the deferred payment on any of the land that was sold there at that time in good money, under the circumstances that surrounded us at that time, and I suppose very few of the others present at the sale would have done so for the land, for we did not have any such money then, or know where it was to come from.

7 question by same. What was the last payment to be made in?

Ans. I don't know, sir.

8 question by same. You state that you would have paid the whole down in Confederate money if you could have done so?

Ans. I would if I could have done so under the terms of the sale, but the terms were ⅓ down, with the privilege of paying ⅔ down, consequently I only paid ⅔ds, according to the terms of the sale.

9 question by same. Why would they not let you pay the other ⅓?

Ans. I did not offer it. Kenney refused taking it from others at that time. Two years after the sale Confederate money had run

down, so that very few would take it. I understood that Kenney had refused taking it from others, but I do not know personally that he did. I did not offer him Confederate money for the last payment myself.

10th question by same. What was the talk among persons at the sale as to the kind of money in which the last payment was to be made?

Ans. I heard it intimated that the last payment would be required in such money as the creditors of Bryan would receive.

11th question by same. Was not that the talk of the people around you with whom you conversed?

Ans. No, sir; I just heard it spoken of. I don't know that I heard more than one person speak of it. I heard it spoken of during the sale—while the sale was going on.

12th question by same.

44 At this point the further taking of depositions herein is adjourned till to-morrow morning at 10 o'clock a m.

Teste: F. A. DAINGERFIELD,
Com'r Ch'y.

COMMISSIONER'S OFFICE,
HARRISONBURG, *Jan'y 7th*, 1875.

Met pursuant to adjournment.

Present: Complainant by counsel and defendant in person, and by counsel.

Cross-examination of E. J. SULLIVAN resumed:

13 question by complainant's counsel. In the announcement of the terms of sale, did you hear the term "Confederate money" used?

Ans. No, sir; I did not hear any "Confederate" at the announcement of the terms.

14 question by same. Did you buy any of this land (of the home farm) from Mr. Effinger since?

Ans. Yes, sir; I did.

15 question by same. How much did you buy, and what did you give for it?

Ans. I bought six lots, I believe. The lots are 78 feet front, I believe. I do not recollect exactly how far they run back. I suppose there is not more than two acres in the six lots; as well as I recollect I paid for all of them somewhere between six and seven hundred dollars. I don't recollect what year I bought them; it was since the war; about 1867.

16 question by same. You stated that you did not know whether one or more people on the ground on the day of sale had informed you that the last payment was to be made in such money as Bryan's creditors would take. Please state the circumstances under which you heard it.

Ans. I first heard it by some outsider that Kenney would take the back payment only in such money as Mr. Bryan's creditors would receive. It was on the ground there at the sale. I do not know

how large the crowd was in which I heard it, but I know I heard it at the sale.

17 question by same. You say you would have been glad to pay yours all in Confederate money if you could you have done so; why would you have been glad?

Ans. I don't know that I said that. I would have done so if the terms of sale had been so as to allow it. I would have paid, because I had the Confederate money, but I heard from others that Mr. Kenney would not receive it.

18 question by same. When the last payment fell due in 1865, was not Confederate money almost worthless?

Ans. Yes, sir.

19 question by same. Were not men very anxious to get rid of their Confederate money at the time of the sale, and to invest it in property?

Ans. I was, for one. There were some men who were selling their property for Confederate money, and some who were buying property with Confederate money.

20 question by same. You had no idea, had you, from the terms of the sale, that when the last payment became due, if Confederate money was then worthless, or had ceased to be "current funds," that you would have the right to pay that third payment in Confederate money?

Ans. That is rather a hard question to answer, from the simple fact that when I bought mine I paid the $\frac{2}{3}$ down, and expected to pay the $\frac{1}{3}$ remaining in whatever was current when it became due. I did not expect to pay it in good money, tho' if I had, I would not have given the one-third deferred payment for the land. I could not at the date of the sale have looked that far into the future.

21st quest. by same. You only bought with the certainty of paying $\frac{2}{3}$ in Confederate money, and run the risk as to the kinds of funds you would have to pay in when the 3d payment became due?

Ans. That is rather a puzzling question, too; when I bought, I bought according to the terms of sale as announced. I paid the $\frac{2}{3}$ down, and did not think much about what the currency would be or what was to happen in two years, and I don't suppose any one else did either. The war was going on and we knew very little about what the result was to be.

22d question by same. What land did you buy then?

Ans. I bought some woodland in Chesnut Ridge, about $2\frac{1}{2}$ to 3 miles from town.

23d question by same. What did you pay for it, and what was it worth before and since the war?

Ans. I was to pay $25.00 per acre for it. I paid 16.66\frac{2}{3}$ down on it in Confederate money and the residue I agreed to pay in good money after the war. I don't know what it was worth before the war. I don't know what it is worth now. I don't suppose it would now bring the back payment if put up at sale.

Re-ex'd:

Quest. by Roller for def't. You state in answer to the 9th ques-

tion on X examination that you did not offer the ⅓ deferred payment to Kenney, and that you understood from others that Kenney had refused to take it, that two years after the sale Confederate money had run down, so at what time was the offer to which you refer in that answer made?

Ans. I don't recollect exactly at what time. I understood from others that Kenney would not take any other money than such as Bryan's creditors would receive. That I understood in the first place and afterwards, when the last payment became due, I understood that Kenney would not receive it except in good money.

And further this deponent saith not.

E. J. SULLIVAN.

WILLIAM FURRY, another witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by def't Effinger. Were you at the sales made
46 by James Kenney, trustee of A. C. Bryan, in March and April, 1863? If so, state who was the crier.

Ans. I was present; I was the crier at those sales.

2d question by same. What were the terms of sale?

Ans. The terms read were ⅓ down and the balance in two or three payments, with the privilege of paying ⅔rds down.

3d question by same. Did you make any public announcement as to what kind of money the purchasers were to pay for the lands; if so, what was it?

Ans. I suppose at the time that the conditions were read that it was to be paid in the then currency—Confederate money. Sometime afterwards, when they had been through the house and came out on the other side, I announced that it could all be paid in "Confederate shucks." I think I got it from Mr. Kenney or from Mr. Bryan. I would not have made the announcement otherwise. I told Mr. Gray a dozen times that it was to be paid in "Confederate shucks," I told him so in order to induce him to bid. He was bidding on the property. The understanding was that it was to be paid in currency, and Confederate money was the currency. That was my understanding of it. When I made the announcement that it could all be paid in "Confederate shucks," the price immediately *when* up, and the property was sold to Mr. Effinger, I think at $210.00 per acre.

4th question by same. Have you made any sales of lands before or since the sale spoken of?

Ans. I have made right smart sales. I had been selling lands for many years prior to these sales, and I continued to sell property at auction until since the war, and up to four or five years ago.

5th question by same. What would have been a fair price in good money for the Effinger farm—the farm Effinger bought at that sale at $210.00 per acre?

Ans. I do not know that I am a sufficiently good judge to say, but I would suppose from $40 to $50.00 per acre.

6 question by same. Have you been called upon in many or in few cases to estimate the value of lands?

Ans. Not many, to my recollection, except in depositions in cases

of this sort, and I have sometimes been asked privately by friends to place an estimate on certain lands.

Cross-ex'd:

Question by complainant's counsel. Which Mr. Gray do you refer to when you say you told Mr. Gray a dozen times that it was to be paid in Confederate shucks in order to induce him to bid?

Ans. I am not satisfied, but I think it was the one who lived at Hill Top. It was not Col. Gray, I know. It was not H. Jouette Gray. It was either Robert or Douglass Gray. I know him when I see him.

2d X question by same. Was it not understood that the purchaser had the privilege of paying ⅔ down in Confederate money,
47 and that the other ⅓ would not be received in Confederate money unless the judgment creditors of Mr. Bryan would receive it?

Ans. Not at the time of reading the conditions; it was not.

3 X question by same. Did you not state that that was the understanding in your deposition taken in another case growing out of a sale of other lands of A. C. Bryan by James Kenney, trustee?

Ans. I don't recollect that I did.

4 X question by same. Has not your deposition been taken in another case of James Kenney, trustee, against one of the purchasers of the lands of A. C. Bryan?

Ans. Not that I know of.

5 question by same. Did you not state in your deposition taken on the 4th of March, 1874, in the action of debt of James Kenney, trustee, *vs.* J. P. Effinger, that it was to be paid "⅓ down, with the privilege of paying ⅔, or so much of it down as the creditors of Bryan's estate would take?

Memo. Question objected to by Roller, for def't, if intended to impeach the witness Furry, because the action of debt referred to was upon the same bond now in suit in this cause, and between the same parties, and in that action James Kenney, trustee, introduced him as a witness in his own behalf when he gave that deposition, and he cannot now attack his credit.

Ans. I don't know whether I stated it that way or not, from the circumstance that I got wind that it could all be paid in Confederate money, before I knocked the land off. This was from Bryan or Kenney, I don't know which. It was after the recess, I think, because I told Gray, and because I got notice from Bryan or Kenney to that effect, and before I had heard that the conditions were ⅓, with the privilege to the purchaser of paying two-thirds or more if the creditors would receive it. The land was at some $150 odd dollars when I got that notice that it could be paid all in Confederate money, and the land "riz." I kept at Mr. Gray to bid, telling him that it was to be paid in "shucks."

6 X question by same. Did you not tell Major L. W. Gambill, in Harrisonburg, on the 4th of March, 1874, the day your deposition was taken in the law case of Kenney, trustee, *vs.* Effinger, that ⅓ of

the purchase-money was to be paid in good money, or in such money as the creditors of Mr. Bryan, who had refused to receive Confederate money, were willing to receive, or words to that effect?

Memo. Defendant's counsel makes same objection as to last question.

Ans. No, sir. Mr. Gambill spoke to me on the subject, and we disagreed about the statement made by Mr. Gambill himself.

7 X question by same. Did you not, on the same day, in Harrisonburg, make the same statement to Mr. Pendleton Bryan, or words to that effect?

Memo. Same objection by defendant's counsel.

48 Ans. No, sir; I talked to Pendleton Bryan about something, and he said that me and Mr. Gambill misunderstood one another, and I asked him how he understood it.

8 X question by Liggett, counsel for complainant. I understand you to say that the first announcement was ⅓ down, with the privilege of paying ⅔ down, and so much of the other ⅓ in Confederate money as the creditors of Mr. Bryan would agree to receive, and that after the recess you were authorized to say that the whole amount would be received in Confederate money. When was that first announcement made; when was the recess taken, and who authorized you to state the change in the first conditions and state that it would all be taken in Confederate money, or Confederate shucks?

Memo. Question objected to by def't's counsel, as calculated to mislead and assuming statements to be made that were not made by the witness.

Ans. The first announcement was made at "the corner of the house," when the terms were read. That announcement was that the purchaser could pay ⅓, with the privilege of paying ⅔, down. They passed away from there some time afterwards and went into the house, and afterwards came out on the other side of the house, where I had gone, near the gate; and my recollection is that they made the announcement to me, and I told Gray he could now buy it for Confederate shucks. I can't state whether Bryan or Kenney told me of the change. It appears to me it was Mr. Bryan, or it might have been Kenney; they were both standing together in the gate.

9 question. What is your age?

Ans. I am 70 odd. I was not so old at the time of the sale, tho'.

10 question by same. How is your memory?

Ans. I believe it is about as good as it ever was.

11 question by same. Was it ever good?

Ans. You had better ask the public about that. The generality of the people in Rockingham county, I think—I would say it is first rate.

12 question by same. Did you not state in your deposition, taken on the 13th day of September, 1873, in the case of Jacob Harnsberger, ex't'r, *vs.* Samuel Simmons and others, that you "did not know

any lands that you ever sold for Confederate money in your life"? Did you not make that statement before F. A. Daingerfield, commissioner in chancery, in this office, in Harrisonburg?

Memo. Question objected to, for reasons stated in exceptions to 5th question on cross-examination.

Answer. I did not state it in that way. Jacob Harnsberger's land was sold for so much down in Confederate money and the balance to be paid in currency, and some of the bidders asked whether it was to be paid in gold or silver. The commissioner told him it would be too heavy to carry; that it would be paid in legal tender.

49 13th question by same. Did you in that case make the statement contained in the 12th (last) question?

Memo. Defendant's counsel makes same objection as to the last question, and the further objection that the question has already been answered.

Answer. I don't know that I ever did sell any lands for Confederate money, except under the circumstances that I am now speaking of. I don't recollect whether I made the statement referred to or not. I suppose I made the statement, or it would not be there in the deposition.

14th question by same. Did you not state in your deposition in that case, in answer to the question "What were the terms of the Bryan sale?" "it was so much to be paid down to the creditors, I think. I do not know what the amount was. I know it sold pretty high. I think there was some arrangement with the creditors. Mr. Price, I think, sold it. I do not know what the terms were"?

Ans. The terms were so much to be paid down—⅓ down, with the privilege of paying ⅔ down. After they went through the house they said it could all be paid down. The agreement with creditors was a supposition from the fact that Mr. Bryan or Kenney came out and said it could all be paid in Confederate money, and I then told them it could all be paid in shucks. I can't answer the question as you put it; there is too much logic in it, unless you leave the creditors out.

15 question by same. Did you make the statement contained in the 14th X question or not?

Memo. Same objection by defendant's counsel as to 13th X question.

Answer. I used that language. I spoke of the sales of the lots by Price off of the same land. They sold pretty high. Mr. Bryan was present at the sale, and I always considered it the Bryan land. I thought Mr. Price was Bryan's agent. I mean Allan C. Bryan was present. It was before the balance of the Bryan lands were sold.

16th question by same. The balance of what lands?

Ans. All that I know about it is that we sold from the improved land, where the house sits, up to the top of the hill. Mr. Price said

that there was to be a street up to the top of the hill (Red Hill), separating the lots sold from the farm.

17th question by same. Did you not state in your deposition in that cause of Harnsberger's Ex'r *vs.* Simmons that you "never sold any property for Confederate money, except that Confederate money was frequently received for down payments, and sometimes it was announced that whatever money creditors would receive would be received for deferred payments"?

Memo. Same objection by defendant's counsel as to foregoing.

Ans. I think I did.

18th question by same. How is — that in the depositions
50 that you have given heretofore in regard to the sale of this Bryan land you have never told what you have here told of the change in the conditions of sale, making it all receivable in Confederate money?

Mem. Question excepted to, for reasons set forth in exceptions to 5th X question.

Ans. I have tried to tell you that; that after the statement, when they came out of the passage, that the money would all be received. I thought it would all be received in Confederate money. I don't know that Confederate money was named, but when I heard that the money would all be received, I announced that it would be paid in shucks.

19 question by same. Why did you not tell it in your other depositions?

Memo. Same objection by defendant's counsel.

Answer. I tried to tell it the same way when I was asked it.

20th question by same. Did Mr. Bryan get you to attend the sale when Price was present at the sale of those lots?

Ans. I think not, sir.

21st question by same. Did you talk to him that day about the sale of the land?

Ans. I think not, sir.

22d by same. He wasn't there, was he?

Ans. I think he was, sir. I am not sure. He had employed me at the river, and at the sale of the other lands, himself.

23d question by same. Were these lots sold on the same terms that the home farm was sold to Effinger?

Memo. Question objected to by defendant's counsel for obvious reasons.

Ans. I don't recollect.

24th question by same. What makes you think that Price was Mr. Bryan's agent?

Ans. I don't know whether he was present, or what he was, but he superintended the sale, and he or a man named Phares paid me the money. I think Price and Phares had an office here.

25 question by same. Was the last payment receivable in Confederate money at this sale of Price's?

Memo. Question objected to by defendant for obvious reasons.

Ans. I do not know.

26 question by same. When did you make the sale of the home farm which Mr. Effinger bought, and when was the sale of the Price lots?

Ans. I can't say. I think I have a book at home which would show. I don't know how long they were apart.

27 question by same. Which sale took place first?

Re-examination:

Question by defendant's counsel. Did the sale of the home farm occur during the war, or not?

51 Ans. It occurred during the war.

2 question by same. When did Mr. Price move to Harrisonburg; before, during, or since the war?

Ans. I can't tell that, sir. I got acquainted with him in the time of the war. I never knew him until I was called on by him to cry some sales.

3d question by same. Is your memory better as to dates or as to other facts?

Ans. If I had the date of any transaction I would know it exactly, and my memory is pretty good as to other facts.

And further this deponent saith not.

his
WILLIAM x FURRY.
mark.

* * * * * * *

G. A. GAY, a witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by defendant's counsel. Were you present at the sales of A. C. Bryan's real estate, made by James Kenney, trustee, on the 30th and 31st of March and the 16th of April, 1863; and, if so, did you hear the terms of sale announced?

Ans. I was present. My recollection is that just before the sale Judge Kenney read the terms and conditions of sale himself. I am not certain whether he read from a written or printed paper, but my impression now is that it was from a written paper.

2nd question by same. What were the terms announced?

Answer. My recollection was that there was $\frac{1}{3}$rd to be paid down, $\frac{1}{3}$ in twelve months, and $\frac{1}{3}$ in two years, the purchaser having the privilege of paying $\frac{2}{3}$ down.

3d question by same. Did you hear any announcement by the crier, or any one having authority over the sale, that the deferred $\frac{1}{3}$ would be received only in such money as the creditors or judgment creditors of A. C. Bryan would receive?

Ans. I don't recollect of hearing any such announcement.

4th question by same. Did you hear any such talk among the bidders?

Ans. No, sir; I heard it frequently spoken of, that it was to be paid in Confederate money.

Memo. Answer objected to by complainant's counsel, as improper and not responsive to the question.

5 question by same. Was there any such impression or expectation among the bidders?

Memo. Question objected to by complainant's counsel, as calling for hearsay and improper evidence.

Ans. Not to my knowledge, sir. I heard no such expression.

6th question by same. Were the terms and conditions of sale the same at all of these sales?

Ans. As far as my recollection goes, they were. I don't
52 recollect of any distinction being made.

7th question by same. Did you become the purchaser of any of the lands of A. C. Bryan at these sales?

Ans. I did not.

8 question by same. What was the currency at the time of those sales?

Ans. Confederate money.

9th question by same. Do you remember any remark made by the crier, or any one else having authority over the sale, by way of inducing persons to bid; if so, what was said?

Ans. When Mr. Furry was selling the home farm, the land which Mr. Effinger bought, I heard Mr. Furry say: "Bid, gentlemen, bid, for I can go to Mr. Bryan's barn and get shucks enough to pay for it easily."

Answer objected to by complainant's counsel.

10th question by same. If there had been any announcement that the deferred $\frac{1}{3}$ was to be paid only in such money as Mr. Bryan's creditors would receive, or any similar announcement, would you not have heard it?

Question objected to by complainant's counsel.

Ans. I think I would have heard it if it had been announced.

11th question by same. In what was it to be paid?

Ans. My impression was, Confederate money.

12th question by same. What was the impression or understanding as to this $\frac{1}{3}$?

Memo. Question objected to by complainant's counsel, as improper.

Ans. I don't know that I heard any of the bidders express themselves about it.

13th question by same. Do you know what the land Effinger bought brought?

Ans. My impression is that it was about $200. I would not be certain, but it is my impression that it was $210. It was in the neighborhood of $200, somewhere.

14th question by same. Did you know Allan C. Bryan's "home farm," at the time of the sale; if so, what was its value in good money at the time—in money such as was current before the war?

Ans. I knew the farm. I have known it for 20 to 22 years. Taking into consideration the improvements upon the farm, I suppose it would have been worth between $50 and $60 per acre.

15 question by same. Do you mean at the time of the sale?

Ans. According to the way I understood the last question, it was before the war. That is the way I answered it. I would not suppose there would be very much difference in its value before the war and at the time of the sale. The property had not been much injured by the war. There had been some little fencing burned off of it, but I do not know how much. I don't know that I could
53 fix the amount of depreciation on account of it; there might be some little, but not much.

16 question by same. Do you know the condition of the house and barn at the time of sale? If so, what was it.

Ans. I know but very little about the condition of the property. There was an injury or crack about the house (a brick building) that I had heard spoken of different times.

Cross-ex'd:

Question by complainant's counsel. Are you estimating its value as farming land, or are you taking into consideration its location with reference to the town of Harrisonburg, and the fact that the greater part of it was susceptible of being divided into building lots?

Ans. I estimated it as farming lands. I did not think I had any right to take into consideration its value in lots, when the land was sold in a whole body of land.

2 X question by same. How does it compare in value, acre for acre, with the Ruffner farm, which was sold by J. N. Liggett to A. St. C. Sprinkel as farming land, and which was bought by Liggett of Ruffner in 1863?

Ans. I would not suppose, to take it for farming lands, there would be a great deal of difference, while I believe the dwelling on the Ruffner farm was the best.

3d question by same. What portion of the Ruffner tract do you consider most valuable as farming lands?

Memo. Question objected to by defendant, as being wholly irrelevant.

Ans. I take the portion from the house to the old Furnace road, thence with said road to Robert Gray's line; thence with Robert Gray's land down back of the house to Mrs. Juliet Smith's land—this boundary taking in all the meadow on the farm.

4th question by same. Is not that portion immediately west of the meadow very poor land, very broken and very rough?

Memo. Question objected to by defendant, as the land on the Ruffner-Liggett farm is not involved in controversy in this suit.

Ans. It is poor and rough northwest of the meadow; immediately west of the meadow it is poor, but not rough.

5 question by same. How is the field next to Mrs. Smith's?

Memo. Same objection by defendant.

Ans. It is not very rich land and not very rough; it is broken.

6th question by same. How does the Effinger farm compare with the land bought by Phillip Liggett of Wm. H. Ruffner before the war?

Memo. Same objection by defendant.

Ans. The Effinger land, as farming land, is better than the farm sold by Ruffner to Liggett.

7 question by same. Was it not well understood at the sale made by Kenney, trustee, in 1863, that ⅓ of the purchase-money was to be left in the land, and would not be received down?

54 Ans. I suppose it was. That was the understanding, I suppose, and I understood that it was not intended to be received down, according to the terms of the sale.

8 question by same. Was not the object of that arrangement to leave a fund in the land to pay the judgment liens which were ahead of the deed of trust?

Ans. If it was, I never heard anything said to that effect.

And further this deponent saith not.

G. A. GAY.

THOMAS WASHINGTON, a witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by defendant's counsel. Were you at the sale of the home farm of Allan C. Bryan, made by James Kenney, trustee, on the 30th day of March, 1863?

Ans. I was at Mr. Bryan's sale in 1863, but I do not recollect the day of the month. I was present at the sale of the home farm.

2d question by same. Did you hear the terms of sale announced; if so, what were they?

Ans. I don't remember that I heard the terms of sale read off. I do not think I heard anything more than what I heard the auctioneer say.

3d question by same. What did the auctioneer say?

Ans. He said it was selling for Confederate money, in urging and pressing the people to buy.

4th question by same. Do you know to whom it was knocked off, and at what price?

Ans. It was knocked off to Jacob P. Effinger. I don't know exactly the price. It was over $200.00 per acre, tho'.

5th question by same. What kind of price was that, a good money price, or a little or big Confederate price?

Memo. Question objected to by complainant's counsel.

Ans. I thought at the time it was a big Confederate price.

Cross-ex'd:

1 X question by complainant's counsel. You mean a big Confederate price for it as farming land?

Ans. Yes, sir; I meant farming land.

And further this deponent saith not.

THOMAS WASHINGTON.

Signed for witness by me, at his request, and in his presence.
Teste: F. A. DAINGERFIELD,
Com'r Ch'y.

* * * * * * *

JACOB P. EFFINGER, the defendant, introduced as a witness in his own behalf, having been by me first duly sworn, deposes and says:

1st question by defendant. Were you present at the sale of Allan C. Bryan's home farm by James Kenney, trustee? If so, state who became the purchaser, and what were the terms and conditions of sale.

55 Ans. I was present at the sale of the home farm, made by James Kenney, trustee, on the 30th day of March, 1863. I became the purchaser at the price of $210.00 per acre, upon the following terms of sale, which were read by James Kenney, trustee. These terms of sale were written by Wm. McKendrie Wartmann, the clerk, and signed by James Kenney, trustee, viz:

"*Terms of Sale of Property belonging to A. C. Bryan, Sold by James Kenney, as Trustee, March 30th and 31st*, 1863.

The real estate will be sold for ⅓ in hand, and the remainder in two equal annual payments, with interest on the deferred payments from the day of sale, with the privilege to the purchaser of paying the first deferred payment also in hand; the purchaser also to pay the tax on the land for the present year. All growing crops of grain reserved, as also the privilege to harvest and secure the same. Terms for the personal property: Cash before the property is removed.

March 30, 1863.

(Signed) JAMES KENNEY, *Trustee.*"

Which terms were read by James Kenney, the trustee, before the sale commenced, and directly after the land was knocked off to me Mr. Kenney came to me with the written terms of sale, and said that he desired me to acknowledge the purchase of the farm, and wrote in pencil on the back of the terms referred to, "I have become the purchaser of the home tract, according to the within conditions, at the price of $210.00 per acre," and I signed this endorsement. This contract is filed in the common law suits lately pending in the county court of Rockingham, and a copy, certified by the clerk of said court, is filed with my answer in this cause, and marked Exhibit "X."

2d question by same. What was the condition of the buildings on the farm at the time of sale?

Ans. The mansion house was in rather a tumble-down condition; the north side wall of the "L" was propped with heavy oak logs to keep it from falling down; the south wall of the L was badly bulged and cracked; the east end cracked; the front wall of the main building was cracked in different places; the south end of the main building was badly damaged, and by separating from the balance of the wall on the west side some five feet from the south corner. By a number of persons it was considered unsafe to live in. The rest of the buildings were in a moderate condition. The barn—the framing of the barn—was badly worm-eaten, so that nails would hardly hold in it.

3rd question by same. To whom did you pay the purchase-money?

Ans. The down payment I paid to James Kenney by check to bank; the first deferred payment I paid in part to the creditors of Mr. Bryan, by the direction of Mr. Kenney and Mr. Wartmann, and in part, or the residue, I paid to James Kenney, trustee, by c'k.

4th question by same. What kind of money was then in
56 circulation, and do you know what became of the money you paid to James Kenney as trustee?

Ans. Confederate money was about the only currency we had at that time. The money was paid to Allan C. Bryan's creditors on debts due by him before the war, dollar for dollar, as I understood from James Kenney and Wm. McK. Wartmann, his clerk, who attended to about all the business connected with the trust subject, which is also certified in the record of the case—Jacob P. Effinger, appellant, *vs.* James Kenney, trustee.

5 question by same. What did you consider this land worth on the day of sale, payable in gold?

Ans. It was worth more than it would have brought in gold. At that time I knew of no one who had gold who would have invested it in land at any price. My purchase of the farm in Confederate money, as remarked by several at the sale, was, according to my idea, equal to about $40.00 per acre in gold, which we thought was a very fair price. If the sale had been for gold, I could not have purchased at any price. I would not have bid on the land.

6th question by same. State whether you have made any payment since the war on this land; and if so, to whom, and what amount?

Ans. On the 2d day of April, 1866, I paid to Spencer A. Coe, U. S. collector of "direct tax," as per his receipt here filed, $21.84. I paid to W. H. Rodeffer, deputy for S. R. Allebaugh, S. R. C., between $400.00 and $500, as evidenced by a copy of the execution issued from the county court clerk's office, in the name of James Kenney, trustee of A. C. Bryan, who sues for the use of A. M. Newman, *vs.* J. P. Effinger; the copy of *fi. fa.* is also here filed. About the 1st of January, 1868, A. M. Newman, as assignee of James Kenney, trustee, collected of J. D. Price, of my money, $424.06, and claimed it as a payment to him of one year's interest (on his judgment aforesaid as assignee of Kenney, trustee,) from which judgment I took an appeal, which was then pending in the circuit court, and from the judgment of the circuit court affirming said judgment I appealed to the supreme court of appeals of Virginia, which court reversed the

judgment of the circuit and county courts aforesaid. After the reversal and remanding of the cause to the circuit court of Rockingham for a new trial, A. M. Newman, the assignee, returned and reassigned this claim to Kenney, trustee of A. C. Bryan—I believe without any statement of credits—and when the case was called for trial, at the January term, 1875, of the circuit court the counsel for the plaintiff, by permission of the court, suffered a nonsuit. An account herewith filed will show the payments I have made on the debt I am here sued on.

7 question by same. When and in what kind of money was the bond sued on to be paid?

Ans. My recollection is that the bond was written "two years after date, and dated the 30th day of March, 1863, to become due
57 on the 30th day of March, 1865. I wanted Mr. Kenney to take the money in the fall of 1863, but he told me the bond would not be due till two years after its date (till 1865), and I asked him in what kind of currency it would have to be paid. He said in whatever was current at the time the bonds became due; that the Confederacy was a fixed fact, and of course we would have Confederate money.

8th question by same. Do you consider $210.00 per acre a Confederate or good money price for the land in controversy?

Ans. At the time of the sale I considered it a heavy Confederate price.

Exhibits referred to in answer to 6th question:

Receipt for United States Direct Taxes.

No. 1096. This is to certify that A. C. Bryan, by J. P. Effinger, has this day paid the undersigned the sum of twenty-one dollars and eighty-four cents, that being the amount in full for taxes, interest, and costs charged under the act of Congress, entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," approved June 7, 1862, upon the following tract or lot of land, situate in the county of Rockingham, State of Virginia, and described as follows: 101 0 20, Harrisonburg, N. ¼ miles, (valuation) $8,090, tax $21.84.

Witness my hand, at Harrisonburg, this 2d day of April, A. D. 1866.

SPENCER A. COE, *Collector.*

The Commonwealth of Virginia to the sheriff of Rockingham county, Greeting:

We command you that of the goods and chattels of Jacob P. Effinger, late in your bailiwick, you cause to be made the sum of four hundred and twenty-four dollars and .06 cents, (one year's interest on amount due by defendant to plaintiff,) with interest thereon, to be computed after the rate of six per centum per annum, from the 24th day of August, 1867, till payment, which James Kenney, trustee for A. C. Bryan, who sues for the use of A. M. Newman, late in the county court of Rockingham county, has recovered against him for

interest thereon; also, four dollars and 98 cents, which to the said James Kenney, trustee, &c., in the same court were adjudged for his costs by him about his suit in that behalf expended; whereof the said J. P. Effinger is convict, as appears to us of record, and that you have the same before the judge of our said court, at the court-house, on the third Monday in October next, to render unto the said James Kenney, trustee, &c., interest and costs aforesaid; and have then and there this writ.

Witness L. W. Gambill, clerk of said court, at the court-house, the 6th day of September, 1867, and in the 92d year of the Commonwealth.

L. W. GAMBILL, *Clerk.*

A copy. Attest: J. T. LOGAN, *Clerk.*

Return.

Satisfied November 11th, 1867; debt, interest, and costs paid to A. M. Newman.

W. H. RODEFFER,
Deputy for S. R. Allebaugh, S. R. C.

58 James Kenney, trustee for A. C. Bryan, who sues for the use of A. M. Newman, to J. P. Effinger.

DR.

1867.			
August 24.	To paid you interest judgment		$424 06
	Costs and com.		24 28
	Interest on same to Aug. 24, '74		188 30
1868.			
January 1.	To your collection of J. D. Price on your judgment		424 06
	Interest to Sept. 1st, 1874		170 62
1866.			
April 2.	Paid to Spencer A. Coe, collector, U. S. direct tax on the land bought of James Kenney, trustee for, &c.		21 84
	Interest on same to Sept. 1, '74		12 10
			$1,264 42

CR.

By bond given Mar. 30, '63, due March 30, 65, with interest	$7,067 67⅔	
Interest from March 30, '63, to Mar. 30, '65	848 12	
	7,915 79	
Scaled 60 for 1, March 30th, 1865	7,783 86	
	$131 93	
Interest March 30, '65, to Aug. 30, '74	$75 20	
		207 13
Bal. due J. P. Effinger Aug. 30, '74		$1,057 29

Cross-examined:

Question by complainant's counsel. Why was the purchaser allowed to pay $\frac{1}{3}$ down, and also privileged to pay another $\frac{2}{3}$ down, but not privileged to pay the whole in the currency of the country?

Ans. I heard nothing said about what was the reason, and can only infer that they preferred electing not to receive the other $\frac{1}{3}$ for two years, in hopes that the currency would then be better.

2nd question by same. Had the currency been appreciating any, or had it been steadily depreciating from the time it was first issued down to the time of the sale, in March, 1863?

Ans. I do not remember about its appreciation or depreciation, but I remember that at the time of the sale it was about 5 or 5 and a fraction for one.

3rd question by same. How many acres in the tract?

Ans. 101 to 103 acres; I do not remember exactly.

4th question by same. How many acres do you now own?

Ans. About 85 acres, with the buildings.

5th question by same. To whom did you sell the residue?

Ans. To J. W. Taliaferro, two lots; Wm. A. Conrad, two lots; Strother Jones, two lots; Linneas Woodson, two lots; to Wm.
59 C. McAllister, one lot; to Mr. Bear, two lots; to Anthony Hockman, four lots; to Jacob L. Sibert, either two or four lots; to Benj. E. Long and Elijah Sibert, a portion; to O. C. Sterling, a portion; J. M. Irvine, a portion; Geo. Messersmith, one lot; E. J. Sullivan, some four or five or more lots; John Scanlon, several lots; Stephen Miller, one lot; Moses Shacklett, one lot; Leonard Eger, one or two lots. I sold some others, but the sales were cancelled.

6 question by same. Have you any memorandum in writing or list in your possession or under your control showing the quantity sold to each purchaser, and the price and the date of the sale? If so, please produce and file it as part of your deposition.

Ans. I have some papers from which I might make out a list of that sort.

(Witness is requested to produce and file hereafter a list.)

7 question by same. How much did you sell off of this hundred acre tract to A. M. Effinger, and at what price?

Ans. I think about 35 acres, with the buildings, for something over $7,000, is my recollection. This was in 1867 or 1868, that I sold to him. I took the land back in 1871, I think, he alleging that he could not pay for it.

8 question by same. How much did you hold the remaining 50 acres (after you sold off this 35 acres and the 15 or more acres in lots) at per acre?

Ans. I don't remember holding it at any particular price. I don't know that I ever desired to sell it. My idea was to retain the balance and build on it. I think, maybe, I received one offer $75 per acre for the remainder, but could not get the party to come up in his payments, as I desired him to, or in securing me in the payment for the land.

9 question by same. Have you made deeds to any of these purchasers for their lots?

Ans. Yes, sir; I have made deeds to some of the purchasers, but not to all.

10th question by same. Have you ever received, yourself, a deed from Kenney, trustee?

Ans. Kenney made me a deed for the three tracts of land which I purchased from him as trustee for Allen C. Bryan in 1863, which deed had been recorded, and was afterwards burned. Some time shortly after he ascertained that they were burned he told me that he would make me a new deed for the tract of land, which I think he did, and my recollection is that it is now of record in the county court of Rockingham.

11 question by same. When was it recorded—the last deed.

Ans. I am not able to say.

12th question by same. Can you approximate the time?

Ans. I cannot.

13th question by same. Was it since the war?

Ans. I can't recollect it. It was in 1865 or in 1866.

60 14th question by same. How was the deferred payment on this land secured?

Ans. I think the vendor's lien was retained.

15th question by same. Have you the original or any copy of either deed in your possession or under your control?

Ans. I really am not able to say, but am rather inclined to think that I may have either a copy or the original deed.

Memo. Witness is requested to produce and file either he may have with his deposition.

Re-examined:

Question by def't's counsel. Was any notice given by any one having authority over the sale, on the day of sale, that the deferred payment of ⅓ was to be paid in such money as the judgment creditors of A. C. Bryan were willing to receive?

Ans. There was not. That thing I am satisfied was altogether an afterthought, of which I now, after examining Mr. Kenney's books, feel perfectly satisfied. Upon examination of the trustee's books, my recollection is that they shew payments to judgment creditors greatly in excess of the cash payments received for the sale of realty, and I have not come across a single creditor of Allen C. Bryan's, since that question was sprung, who had not been willing to take Confederate money. The first time I heard that question was since the close of the war.

And further this deponent saith not.

J. P. EFFINGER.

The foregoing depositions were taken, subscribed, and sworn to before me at the times and place named in the caption and adjournment.

Teste: F. A. DANGERFIELD,
Comm'r in Chancery.

* * * *

A. W. JONES, a witness of lawful age, introduced on behalf of the complainant, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. Were you present at the sale of Allan C. Bryan's home farm, sold by James Kenney, trustee, in the spring of 1863, and purchased by Jacob P. Effinger?

Ans. Yes, sir; I was present.

2d question by same. Who was the auctioneer?

Ans. Furry was the auctioneer.

3d question by same. Who announced the terms of sale?

Ans. My best recollection about the announcement of the terms of sale is that Mr. Wartmann read the terms, and that then Furry announced the terms just as he had read them. I recollect very distinctly that some one remarked that Furry could not read, and when he repeated the terms he said, "See did he not miss a word," and I recollect that he did not. He repeated the terms just as Wartmann had read them.

4th question by same. Were you a bidder?

Ans. I bid on the land.

61 5th question by same. What is your recollection of the terms on which the land was sold?

Ans. My recollection is that there was one-third to be retained in good money to pay off—I think it was—three individuals who would not receive Confederate money. Those individuals were named to me that day. They were Koogler, Dundore, and Kyle. My understanding was that one-third was to be retained to pay those creditors, and the other two-thirds were to be paid $\frac{1}{3}$ down and the other in a certain length of time, or the purchaser was to have the right, at his option, to pay $\frac{2}{3}$ down.

6th question by same. How much did you bid on the land?

Ans. My recollection is that I bid $190.00, and I would have bid a good deal more if I could have prevailed on Mr. Kenney to take all in Confederate money, but I could not. I was pretty flush of Confederate money, and the estate owed me several thousand dollars, and if I had bought it for Confederate money I could have paid for it; but I thought if one-third was to be retained and paid in good money the land had gone to its full value. My recollection is that Mr. Effinger purchased the land at $210.00. I am not certain whether that is the price, but that is my recollection.

7 question by same. Did you have any conversation with Mr. Effinger before the land was knocked off to him?

Ans. My recollection is that I said to Mr. Effinger that I thought $210.00 was all the land was worth, if $\frac{1}{3}$ of it was paid in good money, and that he said to me if it went for $300 it was worth $100 in good money; and it was the general impression at the time that it was worth $100 in gold and silver.

Memo. Question objected to by def't's counsel, as leading, and latter part of answer objected to, as illegal testimony.

Cross-ex'd:

Question by defendant's counsel. Have your debts against Bryan's estate ever been paid?

Ans. Yes, sir.

2d question by same. Have you any interest, direct or indirect, in this controversy?

Ans. No, sir.

3rd question by same. How was your debt paid?

Ans. Previous to the sale of the lands—a few days—the creditors held a meeting in the clerk's office, and all, with the exception of those named, I think, agreed to receive Confederate money, and that is the way my debt was paid.

4th question by same. Were the terms of sale written or printed?

Ans. Well, the terms of sale, I think, were written; that is my recollection. I recollect seeing the terms myself, and my recollection is they were written, but I may be mistaken.

5th question by same. Where was Wartman standing when he read the terms of sale?

Ans. There was either an old store box or a wagon bed,
62 and I am not certain whether Wartmann stood on the box or by the side of it. Furry stood on it, and my recollection is that he held his head down and heard Wartman read it, and then repeated it word for word from the store box; that is my recollection.

6th question by same. Did Wartmann have a paper in his hand?

Ans. Yes, sir. My recollection is that he had a paper in his hand.

7 question by same. Were the terms, as you have stated them to be, read from the paper?

Ans. Yes, sir.

8 question by same. Do you know anything of James Kenney, after the sale was over, taking that paper and writing an acknowledgment of purchase across the back and having Mr. Effinger to sign it?

Ans. No, sir.

9th question by same. Was the conversation with Effinger, to which you refer, before or after the sale; was it not months afterwards, if at all?

Ans. My recollection is that it was before the crier had knocked the land down. It was before the sale was made—my conversation with him.

10th question by same. How came you to remember this conversation so accurately, after a lapse of over 13 years; do you give anything more than your impression of what occurred?

Ans. Well, sir, that was the property above all other properties about Harrisonburg that I valued more than any other property. I had made that my headquarters for several years, and I esteemed it more valuable than any other property about Harrisonburg; that is why. I do not give anything more than my impression of what occurred.

11th question by same. With whom did you live when you made your headquarters there?

Ans. During several years I was selling cattle—trading in cattle. I at that time was boarding at Hill's Hotel, in this town. I had a spell of sickness (rheumatism) for a month or two. Mr. Bryan came to see me nearly every day at Hill's Hotel. After several weeks, when I could walk about on crutches, he insisted upon my going to his house—said his wife said she could cure me up. I refused to go, but she sent the carriage in and I went out and remained there for several months, till I got able to go out on my tramp after cattle, and then I went to Pocahontas for the first lot of cattle after I recovered, and Mr. and Mrs. Bryan insisted on my stopping there still, when I was through the country, and all the cattle Mr. Bryan grazed on this farm, on *on* the Trobaugh farm, and the Mauck farm, I would ship for him, and for a year or two I made my headquarters there, when in this country. I was not there a great deal, but was there when I was in this country.

And further this deponent saith not.

A. W. JONES.

63 WM. REHERD, another witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. Were you present at the sale of the home farm of Allen C. Bryan, lying adjacent to the town of Harrisonburg, which was sold in the spring of 1863 and purchased by Jacob P. Effinger? If so, state the terms of the sale, according to your recollection.

Ans. I was there the day of the sale; I bid on it up to $160 or $180—somewhere thereabouts; I do recollect exactly where I stopped. Benj. Reherd and myself were bidding; we were bidding together. I wanted it for him, and when others would bid against him I would bid. I think that was the way we managed it. The best of my recollection is, that there appeared to be a lien upon the land for Kyle, and that he would not take Confederate money, and that there was a certain amount of the purchase-money retained till after the war to be paid in such money as was current then. That is the way I understood it when I bid upon it.

2nd question by same. Why did you not bid higher?

Ans. I just came to the conclusion that I did not know what might be the state of affairs after the war, and did not know what kind of money might be current or the value of it, and I did not want to go into it unless I could pay it all off. I did not know what money might be placed upon us after the war, or whether we would have to pay in gold or silver.

3 question by same. If the terms of sale had authorized the purchaser to pay it all in Confederate money, what would you have done?

Ans. I guess I would have gone a right smart higher; I had a good deal of that kind of money at that time.

4th question by same. State whether or not you would have gone above $210 per acre.

Ans. Yes, I think I would. I did not consider the money of much value at that time. I never had any confidence in it, and I had a good deal of it.

5th question by same. What was that land worth before the war in good money?

Ans. I can hardly answer that, but I should judge, as close as it lay to town, that it ought to have brought $100 or $125. I never heard any estimate put upon it.

6 question by same. What would that land have sold for if put in market shortly after the close of war, when lands were selling at their value?

Memo. Question objected to by defendant's counsel, as irrelevant, leading, and suggestive.

Ans. I could hardly answer that, but I bought a piece of land at a pretty big figure. I bought 83 acres soon after the war at
64 $50, and it was thought a bargain; everybody thought I got it low, and I am sure I could not now get $25 for it. This tract is about four miles from Harrisonburg.

7 question by same. How did the value of the Bryan farm, in 1863, when it was sold, compare with its value before the war? Was it worth more or less?

Memo. This line of examination is objected to by defendant's counsel, as leading.

Ans. I could hardly answer you that, but would judge there was not much difference. Lands had got up pretty high here after the war. I don't think there was much difference between prices before and soon after the war.

8 question by same. Do you recollect who the auctioneer was?

Ans. I think it was Bill Furry.

9 question by same. Did you hear him or any one announce the terms of the sale, either before or after the bidding commenced, or while it was going on?

Ans. I do not think I was there at the commencement of the sale. I think it had commenced before I got there. While the bidding was going on, I understood that there was money that could not be paid till after the war. I understood it was about $6,000.

10th ques. by same. Did you have any conversation with Jacob P. Effinger at the sale or shortly after the sale, in regard to the land?

Ans. I do not know whether I did or not. I had conversations with different ones at the sale. I understood there was a certain amount of the purchase-money to be paid in good money; that made me quit bidding.

Memo. Defendant's counsel objects to so much of the testimony of the witness as gives statements made to him on the day of sale by others than the defendant Effinger, as hearsay and illegal.

And further this deponent saith not.

WM. REHERD.

* * * * * * * *

JAMES KENNEY, a witness of lawful age, introduced on behalf of the complainant, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. State the terms and conditions on which you, as trustee, sold the home farm of Allan C. Bryan to Jacob P. Effinger, in the year 1863?

Ans. The land was sold according to the written terms, ⅓ in hand, the residue in two equal annual payments, with interest on the deferred payments from the day of sale, the purchaser to have the privilege of paying the deferred payment also in hand.

2d question by same. What was the true understanding and agreement between the parties in respect to the kind of currency in which the third payment or last deferred payment was to be made?

Ans. The distinct understanding was that the third or last payment was to be made in such currency as the judgment creditors of A. C. Bryan would be willing to receive, when it became due, most of them being unwilling to receive Confederate money.

65 Memo. Answer excepted to on the ground that parol testimony is inadmissible to alter, vary, or explain a written terms of sale.

3rd question by same. Do you mean judgment creditors whose judgments were ahead of the deed of trust or subsequent to the deed of trust?

Ans. I think it embraced all judgment creditors up to the time of the sale.

4 question by same. What was the land worth in good money, or United States currency, before the war, and what at the time of the sale?

Ans. Not less than $100.00 per acre.

5 question by same. Do you recollect the price per acre at which the land was sold to Mr Effinger?

Ans. I do not know without making a calculation.

6 question by same. What in your opinion would the land have brought, if the purchaser had had the privilege of paying all in Confederate money, or if it had been understood that it would all be received in Confederate money, either cash in hand or when the bonds fell due?

Ans. I cannot say precisely, but it would have brought a long, long ways over what Mr. Effinger paid for it.

7 question by same. Were you present at the trial of the action of debt which was brought on the bond for $7,000 and odd dollars, mentioned in this cause, by yourself as plaintiff *vs.* J. P. Effinger, defendant, and which was decided by the verdict of a jury, in 1866 or 1867?

Ans. I was present a part of the time, but not during the whole of the trial of the cause.

8 question by same. State whether Allen C. Bryan, Wm. McK. Wartman, and John McQuaide, or either of them, were examined

as witnesses on the trial of this cause; and, if so, whether you heard their testimony?

Ans. I think they were examined as witnesses, but cannot now say positively whether I heard their examinations.

9 question by same. Describe the location of the home farm of A. C. Bryan, mentioned in this cause, and compare its location and value with any other lands similarly situated with reference to the town of Harisonburg?

Memo. Question objected to by defendant, J. P. Effinger, "on the ground of its being irrelevant testimony elicited, comparative, and not to the point."

Ans. The land lies within the corporation of the town of Harrisonburg, and is not more than 10 minutes walk from the court-house. A large portion of it is so situated as to be laid off and sold advantageously in town lots for building purposes. I have recently sold lots, the land not being near as good as the Bryan land, and not in so desirable a part of the town, at the rate of $400 per acre, for building lots.

66 10 question by same. Do you know whether or not any portion of the Bryan home farm has been sold by Mr. Effinger for building lots; and, if so, at what prices?

Ans. There have been a number of lots sold, and a number of houses erected upon the lots. I cannot say how many, or the prices paid.

11 question by same. What is the character of the soil, and what was the condition of the land at the time you sold it?

[Ans.] The soil is the "red land," which is rated as the best land in the Valley of Virginia. It was in good order when sold. Mr. Bryan had cultivated it to the best advantage, and was taking excellent care of it. The whole farm was arable land and smooth. It had a good brick dwelling-house, and an extraordinary good barn, and all necessary outhouses, with a spring high enough to convey the water by pipes to the house.

12 question by same. When you speak of it being worth at least $100 in good money, do you speak of its value as a farm or not?

Ans. I spoke of its value as a farm.

13th question by same. State whether L. W. Gambill, whose deposition was taken on the 7th day of March, 1874, by Commissioner Dangerfield, to be read as evidence in the action of debt, brought on the bond filed with the bill, is now living; and, if not, state when he died.

Ans. He is dead; he died during the last year; I can't state the date. I was at his funeral.

Cross-examination:

Question by defendant. Please examine Exhibit "X," filed in this cause, and see if it is a correct copy of the terms of sale and endorsement of purchase by Effinger?

Ans. I suppose so, but I haven't seen the original for a long time.

2 X question by same. Did you not write in pencil on the orig-

inal terms of sale, "I have become the purchaser of the home tract according to the within conditions at the price of two hundred and ten dollars per acre," and require me (J. P. Effinger) to sign it?

Ans. I suppose it is so; but, as I have said, it has been a long time since I saw the terms.

3 X question by same. To whom did you pay the money Effinger paid you on the land?

Ans. I can't tell the individual, but I suppose I paid it to Bryan's creditors.

4 question by same. Are you aware that there are four different kinds of soil on the Bryan farm, consisting of principally of limestone, slate, gravelly, and the balance, about twenty acres of mulatto soil?

Ans. I am aware that there are different kinds of soil on the farm, but never counted the number, and never estimated the quantity of each kind of soil.

67 5 question by same. Don't you recollect that at the time of the sale of the entire north wall of the brick L to the main brick building was propped up with heavy logs to keep it from falling?

Ans. I cannot say I do. My recollection is that at the time of the sale there was a crack in one of the walls—I do not recollect which—and that there was some talk among the bystanders about how it could be remedied by stopping it up, or by iron rods, or something of the sort, but I cannot now recollect which wall it was, or anything about the log props.

6 question by same. Do you remember, some time before the deed of trust under which you sold was executed, that Mr. or Mrs. Bryan thought the house unsafe, and talked about building it anew?

Ans. I do not recollect that either considered it unsafe, but I recollect that Mrs. Bryan wanted to make some improvements.

7th question by same. Do you know that the barn upon that property was built in 1841 or 1842, and that it was built of logs and frame, and that at the time of the sale made by you as trustee the logs and other timbers were much worm-eaten and decayed?

Ans. No, sir; I don't know anything about that, and I always regarded it, as I have already said, as an extraordinary good barn.

8th question by same. Who was the auctioneer on the day of sale?

Ans. Wm. Furry.

9 question by same. Who announced the terms of sale?

Ans. I think the auctioneer announced them, and I think that I announced them, and talked to every one who was bidding or had an idea of bidding on the farm about them.

10 question by same. What land did you sell first?

Ans. I don't remember.

11th question by same. Where did the sale of Magnolia Farm (the Bryan "home farm") take place?

Ans. Near the house; I think on the north side of the house.

12 question by same. Examine the original paper, of which Exhibit X is a copy, and state in whose handwriting it is.

Ans. I think the body of the paper is in the handwriting of Wm. McK. Wartmann, who acted as clerk of the sale. The signature is in my handwriting. The endorsement on the back, written in pencil, is in my handwriting, and the signature of Effinger, in pencil, is his genuine signature.

13th question by same. Are those the written terms to which you refer in your first answer on examination-in-chief?

Ans. Yes.

14 question by same. Were those terms read on the day of sale? If so, by whom?

Ans. I think those terms were read by me, as the auctioneer
68 cannot read. They were probably announced by the auctioneer, with a qualification as to the kind of money in which the third payment was to be made.

Memo. The latter part of answer objected to by defendant's counsel.

15 question by same. When did Wartmann write out the terms of sale?

Ans. That I am totally unable to say, as he had been clerk for me all through the whole sale of the real and personal estate.

16 question by same. Why did you not put that qualification as to the last payment into the written terms?

Ans. I don't know that I can give any reason, but my conjecture, according to my recollection, is this: After the terms of sale were prepared, and before the day of sale, by a calculation made by Mr. Bryan and myself, we ascertained that we could use the amount of the two first payments, and that the third payment would be sufficient to satisfy the liens for which the creditors would not take Confederate money—I mean the third payment on all the real estate.

17 question by same. Was not that the reason why you gave the privilege to the purchaser of paying the first deferred payment in hand?

Ans. Yes. The reason was that we thought we could use the money, or most of it. We could not use all of the first two payments.

18 question by same. When and where did you make this calculation?

Ans. I don't remember. I can't say how long before the sale.

10 question by same. Was it before or after the sale?

Ans. It was before the sale.

20 question by same. You say that you communicated the terms to everybody who had any idea of bidding; did you take the trouble to explain to each one the qualification which had been made of the written terms?

Ans. That is my impression—that I did—and I now, upon the suggestion of that question, recollect that in my urging Jouette Gray to bid over Mr. Effinger, that he said, if it was all to be paid in Confederate money he would, but that he did not know how that third bond was to be met, or how it was to be paid. I think it was Jouette Gray, but cannot be positive; it may possibly have been Major Gam-

bill who said this to me. My best recollection is that it was Jouette Gray.

21 question by same. Do you remember to have communicated that qualification to Mr. Effinger.

Ans. My impression is that I did, and that I endeavored to make it known to every one interested in the sale, either as creditors or as purchasers. I know I talked to Mr. Effinger several times that day.

69 22 by same. Did you communicate the qualification to those who did not approach you; did you approach them?

Ans. I think I communicated it to those who approached me, and I think I approached many who did not approach me. My effort was to have it generally known.

23d question by same. Was it not to Mr. Bryan's interest to have as many of his creditors to take Confederate money as could possibly be got to do so?

Ans. It was.

24 question by same. If it had been generally understood that arrangements had been made to pay those who would not take Confederate money in a better currency, would not most of them have availed themselves of the opportunity to get the better money? And was it not therefore to Mr. Bryan's interest to keep this proposed arrangement concealed from them?

Ans. It would have been to his interest to have kept it concealed, if we had not, before that time ascertained who would and who would not receive Confederate money; but we knew pretty much who would and who would not receive Confederate money, and therefore it was that we retained the $\frac{1}{3}$ to pay those who would not receive Confederate money.

25 by same. Did you have the creditors' names signed to any binding contract to that effect?

Ans. I did have some. I commenced getting them, but in the disturbed state of affairs I had to leave here, and had to give it up.

26 question by same. In view of the fact that a number of witnesses who were present on the day of sale testify that they heard the written terms of sale, but no qualification, is there not a possibility that you had the idea of this qualification in your mind, but that it was not announced?

Ans. No, sir; it is hardly possible or probable.

27 question by same. Were the terms of sale the same on all the days of sale, and was the same qualification announced?

Ans. My impression is that they were, except one tract of land that was known as the "Trobaugh" farm, which Mr. Senger bought. On that farm Dr. Kyle held a lien, and it was announced that that lien would have to be provided for by the purchaser.

At this point the further taking of depositions is adjourned till to-morrow morning at 9 o'clock.

Teste: F. A. DANGERFIELD,
Comm'r in Chancery.

COMMISSIONER'S OFFICE,
HARRISONBURG, *Jan.* 5, 1877.

Met pursuant to adjournment.
Present: Same parties and counsel as on yesterday.

JAMES KENNEY, witness sworn on yesterday, resumes:

27 X question by defendant's counsel. Did you not sell some of the Bryan lands, and afterwards receive all cash? The
70 Rentch or Mauch tract, for example, or the lots bought by Mrs. Kyle or the Sugar Camp?

Ans. The Mauck or Rentch land, my impression is that I did receive all cash for, after trying to sell it for a deferred payment. I did sell the Mrs. Kyle piece for cash, but that was a strip of land between two roads, not amounting to over a quarter (¼) of an acre. The Sugar Camp, I think, was sold on the same terms as the Effinger (Bryan home tract) land.

28th question by same. Please name some of the creditors who refused to take Confederate money for their debts?

Ans. I can't name many of them now, because I have forgotten, but I can name a few: Dr. Kyle refused in part, Jacob Dundore refused, and there were some other creditors living in localities that I could not correspond with. I think I paid every man who would take Confederate money.

29 question by same. Harvey Kyle took a portion of his judgments in Confederate money from you?

Ans. I think so.

30th question by same. Were the judgments so taken by him older than the one on which he has brought suit on or junior?

Ans. I think they were junior, but I cannot state positively.

31st question by same. Did not both Kyle and Dundore apply to you for more Confederate money than you paid them?

Ans. I think not. I think I paid every dollar of Confederate money that any one of the creditors would receive.

32d by same. How does the Effinger land, as farming land, compare with the David S. Jones (Collicello) farm?

Ans. For farming land, I think that the Effinger land is worth from three to four times as much as the Collicello land. The Collicello land is poor. The location of the Collicello land makes it valuable.

33d by same. How does the Effinger land compare with the Coffman farm?

Ans. There is land on the Coffman farm equal to the Effinger farm.

34th question by same. Was there any time about the year 1868 when any part of the Effinger farm could have been sold off for town lots?

Ans. I don't know.

35 question by same. Was there any demand for or excitement about town lots previous to that time?

Ans. I can't specify the year, but directly after the war our town

began to improve, and there has been a demand for town lots ever since.

Re-examination:

Question by complainant's counsel. Are you acquainted with the tract of 200 acres of land situated near Bryan (Effinger) farm which was sold by Wm. H. Ruffner to J. N. Liggett, in 1863, for
71 $60.00 per acre, payable in good money; if so, how does the Bryan farm compare with that in value per acre?

Ans. I am acquainted with it, and have known it for a long time. I think the Bryan land is worth about as much again as the Ruffner —Liggett land per acre.

2nd cross-examination:

Question by defendant's counsel. Do you know the price Liggett gave, or how he paid for the Ruffner property?

Ans. I do not; I probably did know, but have forgotten.

And further this deponent saith not.

JAMES KENNEY.

A. M. NEWMAN, another witness of lawful age, introduced on behalf of the complainant, having been duly sworn, deposes and says:

1st question by complainant's counsel. Were you present at the sale of the home farm of Allan C. Bryan, made by James Kenney, trustee, to J. P. Effinger, in the spring of 1863?

Ans. I was present at that sale.

2 question by same. Did you see Mr. Effinger while the sale was going on or have any conversation with him?

Ans. I saw Mr. Effinger there on that day and had some conversation with him, whilst he was bidding on the land.

3 question by same. Did that conversation relate in any manner to the terms of the sale?

Ans. I don't recollect that it did.

4 question by same. What were the terms of sale as to the kind of money which was to be received for the land?

Ans. I don't recollect that I heard the the terms of sale announced thereon that day. My only knowledge of the terms of sale was from what I derived from James Kenney, the trustee, in previous interviews with him. Shortly after the land on the river, that was conveyed in the deed of trust by Bryan to Kenney, trustee, was sold by said trustee, I met him (Kenney) at the Bank of Rockingham. He seemed to be very much alarmed at his position as trustee, and selling at that time, lest he might be held responsible to creditors of Mr. Bryan, who would be unwilling to receive Confederate currency for their debts, and he declared his purpose to suspend further sales. I suggested to him to see Mr. Bryan's creditors, and ascertain from them who of them would receive Confederate currency and who would not, and then after doing so, that he might sell on terms as to the kind of money that should be paid by purchasers, so as to meet the views of the creditors. Subsequent to that time, I saw him again, and he informed me that he had had interviews with a number of

the creditors, and he came to the conclusion that he could safely proceed to sell upon the terms, that ⅔ of the purchase-money might be paid in Confederate currency, and the remaining ⅓ to be paid in such money as those creditors would be willing to receive, who were unwilling to receive Confederate money for their debts, and that his purpose was to proceed to sell upon those terms.

72 Memo. Defendant objects to all of the foregoing answer after "I do not recollect that I heard the terms of sale announced," upon the grounds that it was a mere recital of the conversation witness had with Kenney as to what the terms of sale should be, thereby tending to alter by parol testimony the written terms of sale, and as hearsay.

5th question by same. Was the home farm sold to J. P. Effinger before or after these conversations with Judge Kenney, in which he determined to modify the terms of sale?

Ans. After.

6 question by same. Did you have any conversation with the defendant, Jacob P. Effinger, after he had purchased the land and had executed the bond sued on in this cause (bond for $7,067.70⅔), with reference to the kind of money with which said bond was to be discharged?

Ans. I did.

7 question by same. State the conversation and how it came about.

Answer. I was surety for Mr. Bryan upon a bond to Harvey Kyle for $4,400.00; Thomas L. Yancey was also his surety on other bonds. I was anxious to obtain some indemnity to myself and Yancey's estate (I was adm'r of T. L. Yancey's estate), and had seen James Kenney, the trustee, and it was agreed between him and myself that this bond might be used for that purpose; but, being anxious to relieve myself entirely from my liability, I sought Dr. Kyle and informed him that this $7,067.70⅔ bond of J. P. Effinger (the same on which this suit is brought) could be obtained for the purpose named, and enquired of him whether he would not take this bond on Effinger and discharge me from my liability as surety to him for Mr. Bryan. He agreed to do so, provided Effinger would endorse upon the bond that it was not to be paid in Confederate money. I then sought an interview with Mr. Effinger, and I think informed him of the arrangement I was about making, and inquired of him whether he would make such an endorsement upon the bond. Without any hesitation he said he would.

So much of answer as recites conversation with Kyle and with Kenney objected to by defendant's counsel, as hearsay.

8 question by same. State, as near as you can, the time and place at which this conversation with Mr. Effinger occurred, in which he agreed to endorse on the bond that it was not to be paid in Confederate money.

Ans. The time I cannot state definitely; it was in the summer or fall of 1864. The place was on the pavement immediately in front of the store now occupied by Wise, in Harrisonburg.

9 question by same. State how far the arrangement between you and Kenney and Dr. Kyle and the defendant Effinger was carried out, and why it was not carried out in full.

Ans. As respects the trustee, Kenney, and myself, it was carried out in full. The bond was delivered to me by the trustee, for
73 which I executed my receipt, reciting the circumstances under which it was delivered. We were all passing through the exciting scenes of the war at that time, and matters were not attended to as promptly as they would have been under other circumstances. And Dr. Kyle left here not long after these interviews, went South, and did not return until some time after Lee's surrender, and it was because of his absence that the arrangement was not carried out in full with him.

10 question by same. Have you any interest now in this cause of any kind whatever, immediate or remote?

Ans. I have not. The debts for which I was bound as surety for Mr. Bryan, and those for which T. L. Yancey was bound as surety, have been paid from other sources, and I have returned this bond to the trustee.

11th question by same. Did you hear the testimony of Allen C. Bryan delivered in court before the jury which tried the action of debt brought on this bond in 1866?

Ans. I did.

12th question by same. State what his testimony was, so far as it related to the kind of money in which said bond was payable.

Memo. Question objected to by defendant's counsel, on the ground that the testimony of A. C. Bryan in the cause referred to is inadmissible in this, even if it could be proven by competent testimony. Objection is made to the introduction of any witness to prove it, on the ground that the evidence on facts proved in that suit is matter of record, and the witness is incompetent, on account of his connection with the estate and the death of Allan C. Bryan.

Ans. He stated that the last payment on all the purchases was to be paid in such money as his creditors were willing to receive. That was the substance of his testimony. I do not pretend to recite his words.

13th question by same. Did he embrace in that statement the lands which were situated on the Shenandoah river, to which you have heretofore alluded in your testimony?

Ans. I don't think he did.

14 question by same. Did you hear the testimony of Wm. McK. Wartman or John McQuaide?

Ans. I think it probable I did, but I do not recollect what it was.

15th question by same. Are you acquainted with the farm which Mr. Effinger purchased, known as the home farm of A. C. Bryan; if so, how long have you known it?

Ans. I am acquainted with it. I have been acquainted with it for near forty years, but only well acquainted with it since 1854.

16th question by same. What, in your opinion, was the farm

worth per acre, in good money or U. S. currency, at the time it was sold?

Ans. It is hard to say. We had no good money or U. S. currency here at that time. Immediately before the war the land was worth certainly not less than $100.00 per acre, and subsequent to
74 the war, for several years, it was worth greatly above that amount in United States currency.

Memo. Answer objected to by defendant's counsel as irrelevant.

17th question by same. Was it intrinsically worth less or more in the spring of 1863, when it was sold to Mr. Effinger, than it was worth immediately before the war?

Ans. So far as the soil and improvements are concerned, it was worth as much.

18th question by same. Was the fair value of the property less or more in 1863 than in 1860?

Ans. I think about the same, except that the productions having to be sold for Confederate money might make some difference against its value at that time.

19th question by same. How does it compare in value, acre for acre, with the farm known as the Cedars, situated near it, which was sold by Rev. Wm. H. Ruffner to J. N. Liggett, Esq., in 1863, for $60 and odd per acre, payable in good money?

Ans. I think the Bryan land is greatly more valuable.

Cross-examination:

1st question by defendant's counsel. How did that land compare in value per acre in 1863 with the Coffman farm, as farming land?

Ans. There is a considerable portion of the Coffman land that is perhaps more valuable than this, and then there is a very considerable portion of the Coffman land that is not near so valuable—that is, so far as I can say, not having a very intimate acquaintance with the Coffman land. Owing to the proximity of the Bryan land to Harrisonburg, it is, upon the whole, more valuable than the Coffman land; and being a small tract, and nearly all good land, I would say it would bring from 30 to 40 per cent. more per acre in market.

2d question by same. What did the Coffman land sell for since the war at public sale?

Ans. For $42.50.

3d question by same. Did not that land sell during the war—in 1862 or 1863—for $60.00 per acre in Confederate money?

Ans. I don't know.

4th question by same. How does the Bryan land compare in value per acre with the Collicello farm?

Ans. I am not well enough acquainted with the Collicello farm to give an opinion. I was never on it, more than passing along the road.

5th question by same. How did it compare with the Paul land, which you sold during the war?

Ans. I think the Bryan land was worth more than twice as much per acre as the Paul land. I think it always has been.

6th question by same. How much did you get for the Paul land; in what sort of money, and when did you sell?

Ans. I sold in January, 1863. I sold about 203 acres at $100.00 per acre. About $8,000.00 was paid after the war in the cur-
75 rency of the country after the war. The balance was paid in Confederate money. Perhaps, by our contract, something less than $8,000 was to be paid in currency after the war.

7th question by same. What was the condition of the Bryan house at the time of sale?

Ans. It was not in good condition; the walls were considerably cracked, and the porches were somewhat dilapidated.

8th question by same. What sort of barn was on it?

Ans. The exterior of the barn was very good. I am not acquainted with the condition of the timbers.

9 by same. Can you state the substance of what Mr. Bryan testified to on his X examination on the trial of the common law case to which you have referred, in reference to the private and the published or printed terms of sale?

Ans. I have stated about as far as I recollect in respect to his testimony.

10 question by same. Did he refer to any written terms of sale?

Ans. I don't recollect any of the particulars of his examination. I only recollect the substance, which I have stated.

11 question by same. Was there any copy of the printed or written terms used in the trial?

Ans. I don't recollect.

12th question by same. Did you see any written terms on the day of sale?

Ans. If I did, I don't recollect it.

13th question by same. Who was present when you had your conversation with Jacob P. Effinger, with reference to the endorsement upon the bond?

Ans. I don't think any one was.

14th question. Where did it occur?

Ans. In Harrisonburg, on the pavement, in front of the store-house now occupied by Wise.

15 question by same. Did you ever apply to Effinger after the war to make the endorsement, and did he not refuse?

Ans. I have no recollection of ever making the application after the war, or at any other time than that named previously in my examination.

16th question by same. Has not Effinger claimed continuously since the war, in conversations with you in Shacklett's store, and at other places, that you were mistaken in your recollection as to any agreement to make an endorsement on the bond?

Ans. After my testimony in the suit at law, brought on this bond, I have some recollection of Mr. Effinger claiming or saying that I was mistaken, but I have no recollection whatever of having any

conversation with Mr. Effinger in respect to the matter until after that time.

17th question by same. Did you not call Mr. Effinger into
76 the store of Shacklett & Newman, where you were then in business, soon after the war, and ask him to make an endorsement on the bond, and did he not refuse?

Ans. Not to my recollection.

18th question by same. Why did you bring suit on the bond?

Ans. Because I wanted to make the money. Kyle was pressing me for payment of the Bryan debt on which I was surety. I had no money and I wanted to meet his demand by collecting this debt.

19 question by same. Was there not a stay law to prevent its collection, up to 1869?

Ans. This suit was brought in the fall of 1865, before there was any legislation by the State of Virginia, and we were then operating under the laws passed by the Legislature that sat at Alexandria during the war.

20th question by same. The suit was not brought then to settle the controversy as to what was due?

Ans. According to the best of my recollection, I did not anticipate a controversy, and was somewhat surprised when Mr. Effinger defended, for, from what Mr. Effinger told me, I supposed he intended to pay the debt.

21 by same. Are the payments, claimed in the answer to have been made to you on this debt, correct?

Ans. Mr. Effinger, at different periods, paid me the interest for two years on this debt, and the costs of collection. I do not know whether these amounts are correct or not.

22d by same. Have you any doubt as to their correctness?

Ans. My recollection as to the time it was received and the amounts does not enable me to say whether I have doubts or not.

23 by same. How have the debts, in which you and the estate of T. L. Yancey were bound as sureties of A. C. Bryan, been paid?

Ans. The debt for which I was bound was paid on account of Mr. Bryan's interest in some Chicago land. The debts for which Thos. L. Yancey was bound was paid from the proceeds of the sale of lands in Missouri, upon which Mr. Bryan had executed a deed of trust to secure them, and a portion were paid from the proceeds of a note on M. Harvey Effinger, which note was also given over to me for that purpose by James Kenney, trustee, and a portion interest received from J. P. Effinger

And further this deponent saith not.

A. M. NEWMAN.

* * * * * * *

A. S. BYRD, a witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. What is your age, residence, and occupation?

Ans. My age is 52 years; I have lived all my life in Rockingham

county. I am now engaged in milling and selling agricultural implements. I was raised a farmer.

2nd question by same. State whether or not you know the
77 Allen C. Bryan home farm, sold by Kenney, trustee, in 1863, to J. P. Effinger; if so, state how long and how well you have known it, and your estimate of its value in U. S. currency or good sound money, in 1863, and prior to and since the late war?

Ans. I know the place; have been very well acquainted with the land since 1846. My brother and myself purchased four acres of the tract, being the remote corner south of the Rockingham turnpike, and all the land on that side of said road. We paid $150 per acre for it in 1853. At the time we bought this four acres we wanted to buy the same area on the other side of the road, and Mr. Bryan said he would not take less than $200 per acre for that. About one-half of the four acres was the worst on the land. You could not find two acres more on the whole farm as bad as two of the four acres we purchased. The way the farm lies around the town, I would consider the land worth $140 per acre as farming land. I suppose the land is now worth as much as when I purchased in 1863. It was worth as much, unless there was damage done to the fencing. I don't know about that, the land was worth as much.

3d question by same. State, if you please, the productive capacity of this land from your own experience and observation.

[Ans.] In the spring of 1854 I plowed up two acres in front of the house. I built in the four acres after I purchased. I planted it in corn, and in the fall gathered 150 bushels of corn off of the two acres. I seeded the corn ground down in wheat, and in 1855 I cut and threshed 90 bushels of wheat. I turned that stubble and sowed wheat again, and harvested from that 62½ bushels.

4 question by same. State whether or not this piece you bought was cut off so as to damage the residue of the land.

Ans. It was not. I think it was rather an advantage to the residue, at least if I had been buying the rest of the farm I would rather have had that piece sold off. It was all of the farm on that side of the road. It is on the opposite side of the road from the farm, and is cut off from the pike at the farther end from town by other lots. A lot belonging to John T. Harris and C. C. Strayer separated it from the pike on that side.

5 question by same. State what degree of care Mr. Bryan took of this farm, and his manner of cultivating and fertilizing it, &c.

Ans. I have seen them hauling manure from town frequently on it. I think he was trying to improve it all the time, though I think he missed it once in one field by plowing too wet. That was the field along the pike. The portion of this field lying on the pike has been sold off in lots by Mr. Effinger.

6th question by same. State whether or not that land lies well in regard to the Rockingham turnpike and the streets of the town of Harrisonburg for sale in lots for pasturage and building purposes.

Ans. I think it is very well located.

7 question by same. State, as near as you can, its shape, and how many sides of it lie upon the streets or roads.

78 Ans. The south side is along the Rockingham turnpike, from one end to the other. (East Market street runs up the pike.) There is a street along the west end. That is the way the streets were when Mr. Effinger bought it.

8 question by same. How far is this west end from the court-house?

Ans. I don't suppose it is over 200 yards.

9 question by same. Does any of the south end lie in the town of Harrisonburg?

Ans. Yes; it is very nearly all in the corporation.

10th question by same. How far was the nearest point on the south end from the court-house?

Ans. About 200 yards from the nearest point.

Cross-examination:

Question by J. P. Effinger, defendant. Was not money very plenty in the country in 1853, and were you not riding sheriff at that time?

Ans. I was riding sheriff. I had more money then than since the war. I am satisfied that money was more plenty then than now. I know it was so with me.

2 question by same. Did you not purchase the four acres from Mr. Bryan in order to build upon it and have a home near town?

Ans. Yes, sir; that is what I bought it for.

3 question by same. Was or was — gold very plentiful in 1862, 1863, and 1864?

Ans. If it was I did not see it. I saw very little.

4 question by same. Did we have any greenbacks in this part of the country in 1863?

Ans. None that I saw. The first greenbacks I ever saw David Jones showed me some time after the Gettysburg fight.

5th question by same. Do you know of any one in the county who had in the spring of 1863 as much as $1,000 or $2,000 to invest in lands or in anything else?

Ans. I did not.

6 question by same. If that Bryan farm on the 30th day of March, 1863, had been offered for sale at public auction for $40.00 per acre, payable in gold or in greenbacks, do you suppose any one would have taken it?

Ans. If I had had the money I would have taken it at that price, but I know of no one who did have the money.

7 question by same. What was the condition of the buildings on the farm at the time of its sale to Effinger?

Ans. The end walls of the dwelling-house were badly cracked. The barn was a very large building. I am not able to state its condition. I never examined it. I have known the barn since 1846.

8th question by same. Did you ever hear Mr. Bryan or his wife talk about tearing down the house and putting up a new one, or say that the house was in a tumble-down condition?

79 Ans. I heard Mrs. Bryan say that the house was not safe, and that Mr. Bryan was talking about taking it down and

putting it up again, and she was afraid they were putting it off too long, and that they would all be mashed in there.

Re-examined:

Question by complainant's counsel. Who is living in that house now?

Ans. I think Mr. Effinger is.

2 question by same. Do you know what improvements he has made to the house?

Ans. Mr. A. M. Effinger, cousin of Mr. J. P. Effinger, lived there at one time, and had the gable ends taken down and rebuilt. The kitchen was burned down, and I think Mr. J. P. Effinger rebuilt that himself.

And further this deponent saith not.

A. S. BYRD.

* * * * * * *

A. S. GRAY, a witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. Were you present at the sale of the home farm of Allen C. Bryan, made by James Kenney, trustee, to J. P. Effinger in March, 1863?

Ans. I was.

2 question by same. Did you hear the terms of sale of the real estate announced? If so, state what they were, according to your recollection.

Ans. I did. I went there intending to bid on the farm, believing the sale was to be for Confederate paper. I had a very high estimate of the value of the land, and a very low estimate of the value of Confederate paper. I was prevented from bidding by the terms of the sale, after having made one bid, I think. I am not certain whether I had or not. The terms of the sale were read, I think, by James Kenney, and were repeated by the crier, Furry, some minutes after the sale commenced. The last payment, by the terms of the sale, was to be made in such money as Dr. Kyle and other creditors of Bryan would be satisfied with, and I concluded that would be gold, and didn't bid any farther. I am not sure that I had made a bid before, but didn't after we talked it over at dinner there, and that is the conclusion I came to.

3rd question by same. How long is it since you have known that farm, and what, in your opinion, was it worth immediately before the war?

(Memo. Quest. objected to by defendant, as calling for irrelevant testimony.)

Ans. Fifty years and more. I considered it one of the most valuable tracts of its size in the county. I suppose it was worth more than $150 per ——, from $150 to $160 or $170. I regarded that and parts of Collicello as tracts that would sell beyond their intrinsic value as farms. I put a very high estimate upon that farm.

4th question by same. Was that farm intrinsically worth
80 more or less in March, 1863, than it was immediately before the breaking out of the war?

Ans. I think that the destruction and terror and desolation made it intrinsically worth less.

5 question by same. How much less, according to your best judgment?

Ans. The loss of the income or cropping of the farm during the remainder of the war, whatever that would be. If it had been sown in wheat we would have expected the Yankees to reap it.

6th question by same. What per cent. would you suppose that would reduce it below its ante-war value?

Ans. I can hardly answer that question. In the condition we were then in, if a man had had gold it would have made a very considerable difference. I considered gold the best thing to have, and land the next.

7 question by same. Suppose that land had been offered for sale on the condition that all the purchase-money was to be paid in Confederate money, viz: ⅓ cash in hand, with the privilege of paying another ⅓ down, and the ⅓ to be paid in two years in Confederate money, with interest from date, what would it have sold for in March, 1863, when Confederate money was $5 for $1?

Memo. Question objected to, as leading and suggestive, and as calling for an opinion in a hypothetical case.

Ans. It would have sold very high. With the property and credit I had I should have been the purchaser, with my low appreciation of Confederate money.

8th question by same. To what price per acre would you have gone, on those terms, if it had been necessary, in order to become the purchaser?

Memo. Same objection as to last question by defendant's counsel.

Ans. The opinion of other men would have controlled that. I think I would have bid enough to become the purchaser.

9th question by same. What was the land worth in Confederate money in March, 1863?

Ans. To show my estimate of Confederate money, I advised the Dutch to buy a $500 Confederate bond each, from motives of policy, and then I advised them to buy a turkey for Xmas that year with the bond, for it would not buy one the next year. I knew, however, what Confederate money was then worth, and that they could have gone out the next day and have bought a horse with the $500 bond; but I use it as an illustration of my estimate of Confederate money. I can't therefore say what my opinion of what the land was worth that day.

10th question by same. How does the farm compare in value, acre per acre, with the farm known as the "Cedars," which your brother-
in-law, Wm. H. Ruffner, sold to J. N. Liggett, in 1863?

81 Ans. If I had owned this farm I would not have given it for three times the quantity of land of the Cedars.

11th question by same. Do you know at what price, and for what kind of money the Cedars was sold to Liggett?

Ans. My memory is that it was about $60 per acre in good money. The Cedars is about two miles from the court-house.

12th question by same. State, if you know, how Mr. Bryan nursed and treated this farm.

Ans. As well as he was able. He valued it so highly that he treated it as well as he was able to do.

13th question by same. Do you know whether he purchased manure outside of that the farm produced itself?

Ans. Yes, a little. I have known him to have manure hauled from town?

Cross-examination:

Question by defendant's counsel. You have referred to the loss of crops during the continuance of the war as an element of depreciation in the value of the land. Would not the danger of destruction of the buildings be another element?

Ans. Yes; fencing, buildings, and everything of that sort.

2nd question by same. Were the terms of sale written or printed?

Ans. I think the terms of sale were read by James Kenney, because the crier (Furry) could not read and write.

3rd question by same. Did you ever see the original terms of sale in the handwriting of Wartman, signed by James Kenney, endorsed with an acknowledgment of purchase signed by J. P. Effinger?

Ans. I don't think I ever did.

4th question by same. Examine that original paper filed in the common law case of Kenney, trustee for, &c., *vs.* J. P. Effinger, (the original paper just referred to,) and state whether those are the terms of sale as read by Judge Kenney.

Ans. This paper does not express the exact terms as I understood them to be, because it says nothing about that deferred payment being made in money satisfactory to Dr. Kyle.

5th question by same. If these were the terms of sale so acknowledged to be by Wartman, the clerk, by Kenney, the trustee, and Effinger, the purchaser, you must have gotten your idea as to the deferred payments from some conversation with others, or from some source other than the terms as read? May not that be possible?

Memo. Question objected to by complainant's counsel, because it is suggestive of a supposition which the facts do not sustain.

Memo. Defendant's counsel objects to objection, as suggestive, and not a valid objection to a question on cross-examination.

Ans. I got the impression there from explanations made by Kenney (who was the party having control of the sale) in the presence of everybody, and from the fact that Dr. Kyle was mentioned as a large creditor having a lien on it, or interested in it We
82 discussed it at first in squads or in little bevies out there, and then we discussed it inside at dinner, and I talked pretty loud about it at the table, and Furry, who was at the table, left the table,

and sold it before I came out. I may have had the idea that Kyle had a judgment lien, from what was said there, and that he would have control over that last payment.

6 question by same. How long after the terms of sale were read by Kenney and the sale begun was it before you commenced to discuss the question as to how the deferred payment was to be paid?

Ans. I can't tell how long. I walked to and fro, and talked to several persons, and then Kenney was catechised, or something was said to Kenney, and there was such talk as would go on with people on such an occasion.

7 question by same. Kenney gave the explanation then in regard to the deferred payment, in response to questions asked him?

Ans. I presume so, though I don't remember whether it was in response to a question or in the course of a conversation that took place.

8 question by same. Can you now undertake to say that Jacob P. Effinger was present and in hearing of that explanation?

Ans. I could not say.

9 question by same. What was the currency of the country at the time of sale?

Ans. Confederate money.

10 question by same. Kenney gave the explanation to which you refer, as to the deferred payment, after the terms had been read and the sale begun, and some question had been asked him?

Ans. That is my memory of it.

11th question by same. Did Kenney read the terms of sale from a newspaper or from a written paper?

Ans. I don't remember which.

12th question by same. Was not the sale advertised in the Rockingham Register?

Ans. I think it was.

13th question by same. Were the terms read the same as those advertised in the Register?

Ans. I don't know. I don't remember that I read them in the Register. I know I went to the sale with the impression that the property was to be sold for Confederate money.

14 question by same. You were not a believer in the success of the Southern cause, and did not believe in the money therefore?

Ans. That is so.

15 by same. While Confederate money rated by the scale at 5 to 1 at that time, and was so valued in commercial centres, was it rated so low as that in most parts of the country by business men in buying property?

Ans. I think not; I don't think the people in their dealings with each other put it as low as it rated by the scale.

83 16 question by same. Was it rated at that time by our people in their business transactions at more than 2 or 3 to 1?

Ans. Some things people would sell at that rate, and others they would not sell at four times that rate. A horse worth $100 you could buy at $300 to $400, because they thought that some one would steal him. But some other kinds of property, not liable to be stolen, you

could not buy at those times that rate proportioned to their real value.

17 question by same. Could that land have been sold in March, 1863, or at any time during the war, for $40 per acre in gold, or in U. S. currency?

Memo. Objected to by complainants, as irrelevant.

Ans. I don't think it could at that time. I don't think there was a man that we knew of who could have bought it and paid cash.

18th question by same. You referred to the loss of crops, and damage of destruction of property as elements of depreciation. Would not the chance of the failure of the Confederacy and possibility of confiscation have been another element of depreciation in the mind of a thoughtful man?

Ans. I think it would have affected the public mind to some extent. The Richmond papers were teaching that confiscation was the order of the day, or would be the result of the failure of the Confederacy.

Re-examined:

Question by plaintiff's counsel. What was the fair value of that farm per acre, in March, 1863, estimated by the standard of what we now know as U. S. currency?

Memo. Question objected to, as going into examination-in-chief.

Ans. I have answered that question above. I would place it at what it was worth before the war, less the elements of depreciation.

And further this deponent saith not.

A. S. GRAY.

ROBERT A. GRAY, a witness of lawful age, introduced on behalf of the complainant, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. Were you present at the sale of the home farm of Allan C. Bryan, in March, 1863?

Ans. I was.

2 question by same. State whether you heard the terms of sale announced; and, if so, what they were.

Ans. I did; The terms were, one-third down in Confederate notes, with the privilege of paying another third, and the remainder at some future time, to be paid, as I understood, in what would approximate specie.

3 question by same. Who were the bidders on the land?

Ans. Mr. J. P. Effinger, and Col. A. S. Gray, and I think, perhaps, Maj. L. W. Gambill.

4 question by same. Did you see Mr. Jacob P. Effinger at the sale when the terms were announced?

84 Ans. I did.

5 question by same. How long have you known the farm?

Ans. For a long time. Very well at the time of sale. I lived on a farm adjoining.

6 question by same. What is your estimate of its value immediately before the war?

Ans. I consider it worth about $70 per acre.

7 question by same. Do you mean $70 cash?

Ans. Equivalent to cash—back payments, bearing interest.

8 question by same. How did it compare in value just before the war, acre per acre, with the Cedars farm, which was sold by your brother-in-law, Wm. H. Ruffner, to J. N. Liggett?

Ans. It was worth $20 per acre more than the Cedars, and that is rather on account of its location.

9 question by same. Do you know of any other property in the county of Rockingham of equal quality and improvements, independent of its proximity to Harrisonburg, that has ever sold at $70 per acre?

Memo. Question objected to by defendant's counsel, as leading, suggestive, and otherwise illegal.

Ans. I do. I helped to sell Inglewood, which I considered of better quality, at $60 per acre, and it was generally considered a high price.

10 question by same. Did you have any conversation with J. P. Effinger while the sale was going on?

Ans. I think not. I went there expecting the farm to be bought by Col. A. S. Gray for Maj. Gambill and myself.

11 question by same. Suppose the property had been offered for all Confederate money, would it have sold for $210 per acre?

Memo. Question objected to by defendant's counsel, as leading and entirely illegal.

Ans. I think not. I think it would have brought $300 per acre.

Cross-examination:

Question by defendant's counsel. Who read the terms of sale?

Ans. Mr. James Kenney, out of a newspaper.

2d question by same. From whom did you understand that the 3rd payment was to be made in money approximating specie?

Ans. It was my idea from hearing the terms of the sale read.

3rd question by same. Did the terms of sale read from the newspaper mention specie, or did you simply infer that from its language?

Ans. I did not. I simply inferred it.

4th question by same. Did you hear anything said that the deferred payment was to be made in such money as the judgment creditors of Bryan would receive; if so, by whom was it said?

Ans. The talk on the ground was to the effect that the last payment, as it would have to be made, was the value of the farm, or a fair price for the farm, and that may have produced the impression with me that specie or its equivalent would be expected.

85

5th question by same. There was nothing in the terms announced to that effect; it was simply what you gathered from conversation?

Ans. I answered that question before. The read terms produced the impression on my mind that it was to be paid in specie, or its equivalent, and I also may have gathered it from conversations upon the grounds. The last payment caused my party to stop bidding.

6th question by same. Did you hear any explanation made by Jas. Kenney, after the sale had begun, in response to inquiries as to the kind of money in which this last payment was to be made?

Ans. I heard him answering questions. I think his answer was to this effect: ⅔rds could be paid in Confederate money and ⅓ secured on the farm.

7 question by same. How long was it after the sale began before you heard any such explanation?

Ans. Immediately or very soon after the reading of the terms.

8 question by same. Is not a part of that land rather thin?

Ans. I think so.

9th question by same. You own the land adjoining, do you not?

Ans. I did. I owned lands north and east of it, and I now own ¾ of an acre south of it, which is a part of the Bryan farm. I now own all the portions of land referred to.

10th question by same. You owned all except the ¾ acre at the time of the sale?

Ans. Yes.

11th by same. At the time of sale were there not elements of depreciation, such as inability to raise and secure crops, danger of destruction to buildings, and possibility of confiscation, which would materially lessen the value of the land, compared with its value before the war?

Ans. I don't think that had much effect upon the sale. I don't believe many persons at that time believed in confiscation. I don't think people calculated on buildings being destroyed, or crops, or anything of the sort; they bought land for safe investment.

12th question by same. What would that land have sold for in March, 1863, for good money, payable with interest, when good money was again in circulation?

Memo. Question objected to by complainant's counsel.

Ans. From $50 to $75 per acre.

13th by same. Do you not know of land as good as that that could be bought now, and could have been bought before the war, for from $20 to $30 per acre?

Ans. I am offered, at $20, quite as good, anyhow. I can buy James river low grounds at $30 per acre. I don't think that a fair question, though.

14th by same. Do you know the Coffman property, "Inglewood;" if so, how would that compare in value in 1863 with the Bryan land, acre per acre?

86 Ans. I think it quite equal in value, leaving out the location.

15 by same. You regard it, then, as equal, as farming land?

Ans. Yes, quite.

And further this deponent saith not.

ROBERT A. GRAY.

JANUARY 12TH, 1877.

HARVEY KYLE, a witness of lawful age, having been duly sworn, deposes and says:

1st question by complainant's counsel. Examine the deposition which you gave as a witness on the 4th of March, 1874, in the case of James Kenney, trustee, *vs.* Jacob P. Effinger (in the action at law then pending in the circuit of Rockingham, on the bond for $7,067.70⅔ which is sued on in this cause), and state how far your recollection of the facts deposed to by you at that time were correct, according to your present recollection.

Memo. Question objected to by defendant's counsel, as leading and not a proper method of interrogation.

Ans. I reiterate every fact stated in that deposition, and have some other recollection beside why I did not take Confederate money for those judgments of Bryan that I held.

2nd question by same. Have you ever had any conversation with the defendant, Jacob P. Effinger, in regard to the kind of money in which this bond was payable? If so, state the time and place, and what he said on that subject.

Ans. My recollection is stated in my deposition given at the time and in the case referred to in the first question. My recollection then was better and fresher on the subject than it is now. I adopt that deposition, so far as it refers to that subject, as my answer to this question. All that I say, then, I say again, I reiterate.

At this point the following answer from said deposition was read to witness and adopted by him as his answer to the above question, to wit:

It was prior to Nov., 1864, that I had a conversation with him on that subject. It was on the pavement between Hardesty's corner and the American Hotel, in the town of Harrisonburg. Dr. Newman was surety for Allen C. Bryan, in the sum of $4,400, due me. Newman desired to relieve himself from the debt; he learned (so he informed me) that he could get the deferred payment of Jacob P. Effinger, on the Bryan land of Mr. James Kenney, trustee of A. C. Bryan, and asked me if I would take that bond in satisfaction of my debt, or so far as it would go towards it. I suppose that my claim, with its interest, was larger than the debt of Effinger to Kenney, trustee. I informed the Dr. (Newman) that I would take it if Effinger would endorse upon it that it was not payable in Confederate money, or that it was not to be paid in Confederate money. In passing down the street I overtook Effinger, or we met, and I stated to him the conversation I had had with Newman, and he stated to me that he would endorse upon it that it was not to be paid in Confederate money.

Memo. Defendant, by counsel, objects to this mode of examining again, as illegal.

87 At this point a question arose as to whether or not in asking the second question, the counsel for complainant inter-

rupted the witness in his answer to the first, it being claimed by defendant's counsel that such was the case. Witness had checked up in his answer, his utterance being difficult and articulation being difficult by reason of paralysis of his tongue and palate. The commissioner being unable to certify certainly the fact as to the effect of said second question as an interruption to the answer to the first, leaves the question to witness, who desires to add to his testimony the reason why he took Confederate money on these particular debts, and proceeds to depose in answer to first question as follows, viz: I held several executions against Mr. Bryan. The sheriff levied, and I wanted the money, and it turned out after his making the levy that it was illegal—that the levy did not bind. I was told the levy was made in town, and the property was on the river. Believing I had lost my security—lost my lien—I took the Confederate money.

Cross-examined:

Question by defendant's counsel. Who did you take it from?

Ans. From Mr. James Kenney.

2 question by same. From what source did this Confederate money come?

Ans. I suppose it came from Bryan's estate. I did not attend any of Bryan's sales.

3rd question by same. It was after the sale of Bryan's property in 1863, was it?

Ans. I believe it was. Kenney has my receipt.

4 question by same. It was paid on judgments docketed prior to the deed of trust, was it or not?

Ans. It was paid on executions. I suppose there were judgments. Kenney paid it on those claims of mine without any question.

5 question by same. Were not those judgments docketed?

Ans. I suppose they were.

6 question by same. In what years were they rendered?

Ans. I don't recollect.

7th question by same. Were they rendered before February, 1861; were they not rendered and docketed before February, 1861?

Ans. I do not know, sir; I don't recollect. I don't recollect whose they were. I have a book at home which I wrote them down in, but I have not seen the book for years. I have not seen one of these judgments, or thought about them, since I got the money.

8th question by same. If docketed, they were docketed before the war, were they not?

Ans. I suppose so. I recollect that my object *object* in buying them was to protect Bryan's property from sale—to protect Mr. Bryan. My hope proved fallacious, however.

9th by same. These judgments and executions were prior to your judgment against Bryan for $7,500, were they not?

Ans. I think not.

88 10th question by same. Did you ever apply to Kenney for any money, other than that paid you in 1863?

Ans. No, sir; Mr. Kenney never offered to pay me any other. What he did pay me he paid unsolicited.

11th question by same. Did you know of Mr. Bryan giving the deed of trust?

Ans. Yes, sir.

12th question by same. Did you advise it or acquiesce in it?

Ans. I don't know that I was consulted.

13th by same. Had you ever expressed, before the day of sale, any unwillingness to take your judgments against Bryan from the trustee in Confederate money?

Ans. The debt of $7,500 I never had expressed a willingness to receive in Confederate money. I don't know that I ever was willing to take that in Confederate money. I never was willing.

The whole of the cross-examination to this point is objected to by complainant's counsel, pursuant to notice of objection given at commencement of cross-examination, as "irrelevant to this cause."

14th question by same. Did you know Mr. Bryan's "home farm"?

Ans. Yes, sir; I have known it many years.

15 question by same. What was it worth in good money, on terms equivalent to cash, before the war?

Ans. I offered him $100 per acre for between eighty and one hundred acres of it myself.

16th question by same. Your debts were to be taken in, were they not?

Ans. Yes, sir; I suppose so.

17 question by same. It would not have brought that at public auction on such terms, would it?

Ans. I don't know that it would not.

18 question by same. Did you ever acquiesce in the deed of trust?

Ans. I did not.

19 question by same. How much less was that property worth in March, 1863, than it was before the war?

Ans. The kind of currency it was to be paid in would make a difference, but the property was intrinsically worth as much as it was before the war.

And further this deponent saith not.

H. KYLE.

GILES DEVIER, another witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. How old are you, and where do you live, and what have been your opportunities, from your occupation and observation, to know the value of lands in Rockingham county?

Ans. I am 56 years old—past; I live now in Harrisonburg. I was raised on a farm, and have been a farmer before the war, and have been on this land frequently when it was owned by Rice, and when it was owned by Bryan.

89 2 question by same. What was the value of the land in the bill mentioned in U. S. currency, or good, sound currency, immediately before the war, in March, 1863, and immediately after the war (as a farm)?

Ans. Taking into consideration the location and quality of the land I could not fix a less price on it than $100.00 per acre before the war, during the war, and since. I am not able to put a price on it, for lands do not seem to have any fixed value.

3rd question by same. If that land had been put up at public auction just before the war, payable in one, two, and three years, what do you think it would have brought?

Ans. I think it would have brought at least $100.00.

4 question by same. What the most?

Ans. I don't know; it would depend on circumstances altogether, but I feel satisfied it would have brought $100.00 per acre.

5 question by same. Do you know of the sales of any land made in the spring of 1863, or about that time, in which the payments were not to be made in Confederate money?

Memo. Question objected to by defendant, J. P. Effinger, upon the grounds that it has nothing to do with the case.

Ans. Yes, sir.

6th question by same. State them, and how.

Memo. Same objection as to last question.

Ans. The sale of Coffman's farm, on Linville creek, to Wenger; the sale by Irick to Coffman; the sale of a part of the Coffman land to John Brock. A portion of those sales was for payment after the war, or for other money than Confederate money. I do not recollect of any other at present.

Memo. Defendant J. P. Effinger objects to the foregoing question and answer, as irrelevant.

7 question by same. Do you recollect of the sale made by J. N. Liggett, of 155 acres of land, made about the spring of 1863, to H. L. and J. C. Shoup?

Memo. Defendant Effinger objects to question, as leading, suggestive, and improper.

Ans. I recollect the sale perfectly well, but do not reccollect how the payments were to be made. But do know that Shoup paid a good portion of the money after the surrender to Mr. Ruffner.

8 question by same. Taking into consideration locality, roads, markets, and improvements, and the different quantities of land, how would you compare the Bryan tract of near 100 acres by the acre with this last mentioned tract?

Memo. Question objected to by defendant Effinger, upon the ground of its being irrelevant and suggestive.

Ans. The Bryan land is worth considerably more. Many persons would give double.

9 question by same. Are you acquainted with the Inglewood farm, bought by Coffman of Irick, and Irick and Gray?

Ans. I am; I have been over the farm frequently.

90 10 question by same. Compare the value of that tract as a whole with the Bryan tract.

Ans. The Bryan land is worth considerably more as a whole. There is a good deal of the Coffman tract equal to any of the Bryan land, but there is great portion that is far worse than any of it.

11 question by same. How much broken, rough, whiteoak poor land is there on the Inglewood farm, especially directing your attention to the western slope nearest town?

Ans. I am not prepared to say the number of acres. There is a good deal of the land on the Kratzer road that is thin land, and then there is on the eastern side some portion of that, but I don't know just what quantity.

12 question by same. Now state the comparison of the two farms.

Ans. I don't know exactly how to do that. I know that the Bryan land is worth the most, but I would hardly know what to fix it at.

13th question by same. Do you know the "Cedars" farm, bought by J. N. Liggett, of Ruffner?

Ans. I know the farm.

14th question by same. Compare the value per acre of the Bryan farm with that farm, taking into consideration the same facts of location, soil, improvements, and quantity?

Memo. Question objected by J. P. Effinger, on the ground that it is foreign to the matters involved in this suit.

Ans. The "Cedars;" there is a good deal of right good land on that place, but it is rolling, and would not sell for near as much as the Bryan land. I don't know whether it would bring much more than half as much as the Bryan land. The Bryan land would sell for a great deal more by the acre, but I can't say how much; right smart more, though.

15 question by same. What land lies most convenient to the courthouse and the business part of Harrisonburg for pasture lots and building lots?

Ans. The Bryan land lies convenient, and there is some land convenient on the southwest side. That Bryan land is nearer the courthouse than the land on the southwest side.

Cross-examined:

Question by J. P. Effinger, the defendant. Isn't Jacob N. Liggett the former owner of the farm called the "Cedars," a brother-in-law of H. L. Shoup, and one of the counsel for plaintiffs in this cause or what transactions was there between them by which Shoup paid for the Cedars?

Ans. Shoup had no interest in the Cedars. He had bought a farm on Linville's creek from Liggett, and Liggett assigned his bonds to Ruffner in payment for the Cedars. Liggett is counsel in this case; I do not know for whom; Liggett is Shoup's brother-in-law.

2d question by same. Have you ever been all over the
91 Bryan farm and estimated the quantity of white oak land, gravel land, slate land, &c.?

Ans. I have been over the place more than once. I could not say whether I had been over every acre of it. I don't know that I have ever estimated the white oak, gravelly, or slate land on it.

3rd question by same. If that farm, on the 30th day of March, 1863, had been offered for cash, payable in greenbacks or good money, taking into consideration the unsettled state of affairs by reason of the war, would it have sold for $40 per acre?

Ans. I don't know that anybody would have given it. I know I would not have given it, to be paid in good money after the war, because no one knew what the result of the war would be; but men have bought other land in the same way at a much greater price.

Memo. Question and answer objected to by complainant's counsel, because in no event can the testimony be relevant to this case. The question is not what any one would give for the land, but what the defendant contracted to give is the first question, and the only other question in the case is, what was the fair value of the property on the day of sale.

And further this deponent saith not.

GILES DEVIER.

HARRISONBURG, *Jan'y 13th*, 1877.

PENDLETON BRYAN, a witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. Were you present at the sale of the home farm of Allan C. Bryan (the land referred to in this cause), made by James Kenney, trustee, to Jacob P. Effinger, in March, 1863?

Ans. I was present.

2d question by same. Did you hear the terms of sale announced on that day and at that sale; and, if so, by whom; when, and what were they?

Ans. I did. They were announced at the commencement of the sale by James Kenney, trustee. The terms of sale were repeated by the auctioneer, William Furry, to the crowd. The terms of sale, as I recollect them, were one-third cash in hand; one-third at the expiration of twelve months, with the privilege to the purchaser of paying the first deferred payment in hand, and the remaining third in two years.

3d question by same. Do you remember in what kind of currency the remaining $\frac{1}{3}$ was announced to be paid?

Memo. Question objected to by defendant's counsel, as leading and suggestive.

Ans. It was announced that the two first payments might be made in Confederate currency, and the last payment in such currency as the creditors of my father would receive, it being understood that

some of the creditors would not receive Confederate money, notably Dr. Harvey Kyle, who was a large creditor of my father.

92 (Memo. Answer objected to, as altering or contradicting the written contract touching the sale between complainant and defendant.

4 question by same. Was there anything said as to the kind of money or currency in which these payments were to be made. If so, state what.

Memo. Question objected to by defendant's counsel, as suggestive.

Answer. Judge Kenney said frequently, in response to questions asked by persons present, that Confederate currency would be received for the first two payments, but the last payment would have to be made in such money as the creditors of my father would receive.

5 question by same. State was said, if anything, on that subject in public announcement.

Memo. Defendant's counsel objects to this line of examination, as leading and suggestive.

Ans. The auctioneer, again and again, announced the terms publicly, as I have stated them above, both as to time of payment and the kind of currency.

6th question by same. As you have stated them in answer to what question above?

Memo. Same objection by defendant's counsel as to preceding question.

Ans. As stated in my answer to 4th question.

7th question by same. Do you remember seeing Mr. Effinger there at that sale?

Ans. I did.

8th question by same. What was the value of that farm in good, sound currency immediately before the war, at the time of the sale, and immediately after the war?

Ans. I believe it to have been worth $140 per acre.

9th question by same. What kind of care did your father take of that farm in the way of cultivation and manuring?

Ans. In my judgment that farm was more carefully and judiciously cultivated than any within the range of my knowledge. All the manure made upon the place was applied to it, and my father bought large quantities of manure for it from the hotels.

10th question by same. What sort of barn was on the farm at the time of sale? Tell all you know about it.

Ans. It was an excellent barn. I don't know a better one. I presume it must have been erected some time in 1850 or 1851. I was born in 1844, and I must have been 6 or 7 years old. I remember all about its erection. It was a large barn with large mows, two granaries on the second floor, and with stabling for 16 to 20 horses; for twenty horses at least.

11th question by same. Was there any other house besides the house the family dwelt in on the place; if so, describe it?

Ans. There was a substantial two-story log-house, almost as good as new, containing four good-sized rooms.

93 12th question by same. Do you consider yourself in any way interested in the result of this suit?

Ans. If at all, very remotely. I do not know that I am at all.

Cross-examination:

Question by defendant's counsel. Please explain what you mean by remotely.

Ans. I hardly know that I can. My interest is so remote that I can hardly explain what I did mean. I meant that in the event that a suit pendiug against Deneale (for the benefit of my father's estate) should prove successful and the claim against Effinger asserted in this suit should fail, the debts of the estate might fall upon what might be realized for the benefit of the estate in the suit against Deneale.

2d question by same. If your father's creditors are paid out of the proceeds of this and similar suits against purchasers of other property of his, you might expect something if the Deneale suit was successful?

Ans. I would.

3d question by same. Have you ever seen a paper, now filed in the clerk's office in the county court of Rockingham, in the ended law case of Kenney, trustee for, &c., *vs.* Effinger, in the handwriting of Wm. McK. Wartmann, signed by Kenney, purporting to be the terms of sale of the farm?

Ans. I have not.

4th question by same. Who dictated the terms to the auctioneer?

Ans. James Kenney, the trustee. He also announced them, himself.

5th question by same. When he so dictated them, did he have a newspaper, or terms in writing, or hand-bill?

Ans. I don't remember.

6th question by same. The sale was advertised in the Rockingham Register, was it not?

Ans. Yes, sir.

7th question by same. Did you see the terms therein published?

Ans. I presume I must have done so, but don't remember what they were. I am pretty well satisfied that the lands were advertised in the Register. I remember seeing posters advertising all my father's property.

8th question by same. Did Kenney have a poster from which he dictated the terms to the auctioneer *auctioneer?*

Ans. I think not, sir.

9th question by same. Did he have nothing?

Ans. I do not remember whether he read the terms from anything or not. The terms were brief and easily remembered.

10th question by same. Kenney only gave the terms in a conversational tone to those who enquired of him when he announced them?

Ans. When they were ready to commence with the sale, the auc-

tioneer gave notice to the crowd that if they come forward he
94 would announce the terms of sale. The crowd gathered about the auctioneer, Judge Kenney standing at his side. From that position he announced the terms of sale, which were repeated in a loud tone by the auctioneer.

11th question by same. After that time Kenney only communicated the terms in a conversational tone to those who enquired of him, so far as you know; he did not cry them aloud again himself?

Ans. He spoke them aloud, or I would not have heard them when he announced them to persons who arrived after the sale commenced.

12th question by same. You said, in a deposition in the Liskey case, that "the announcement made by your father, Judge Kenney and Mr. Wartman to the bystanders, were made, you supposed, only in answer to questions asked them, not proclaimed aloud by them." Is that correct—is that still your view?

Ans. The statement referred to in the question was made with reference to a sale made at a different place, and, if I am not mistaken, on a different day, and was correct.

13th question by same. Did not the sale take place on the same day and at the same place—the Liskey sale?

Ans. I will not be positive as to whether it was the same day, the day before, or the day after; it was certainly not at the same place. The sale of the Liskey land took place in the front of the house. The sale of the home farm took place on the north side of the house, in the vicinity of the barn.

* * * * * * *

14th question on cross-examination by defendant's counsel. Have you examined the original terms of sale, on file in the ended law case in the county court of Rockingham, in style James Kenney, trustee, *vs.* J. P. Effinger? If so, state whether or not those terms were present on the day of the sale of the farm in controversy.

Ans. I have examined the paper referred to. I am unable to say whether that paper was present on the day of sale or not.

15th question by same. Do you know whether or not the terms therein set forth were read on the day of sale or not?

Ans. I do not know whether the terms of sale were read from that paper or not. The terms of sale as announced corresponded with the terms set forth in that paper, except that it was stated that the second deferred payment would have to be made in such currency as the creditors of my father who would not take Confederate money would be willing to receive.

Memo. The latter part of answer objected to by defendant's counsel, as inadmissible.

Re-examination:

Question by complainant's counsel. State whether any of the buildings have been removed off the farm since the sale in March, 1863.

Ans. Yes, sir, a portion of them—the log-house in the yard, referred to in my examination-in-chief, has been removed; also
95 a considerable portion of the eastern end of the barn has been removed.

And further this deponent saith not.

PENDLETON BRYAN.

EMANUEL ROYER, another witness of lawful age, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. Were you present at the sale of the Bryan farm, mentioned in this cause, made by Kenney, trustee, in March, 1863; if so, state whether or not you heard the terms of sale announced; and, if so, what what were they?

Ans. I was. I heard the terms of sale of the home tract. The terms were three payments, and the last payment was to be specie or good money whenever it was called for.

2nd question by same. How long have you known that tract of land?

Ans. I have known it since 1839.

3rd question by same. What, in your opinion, was it worth in good money just before the war commenced?

Ans. I would suppose it was worth $120 per acre.

4th question by same. Was its fair value less or more than that in March, 1863?

Ans. I would think it would have been more, if anything.

5th question by same. What would you estimate as the fair value of that land in March, 1863, rating it according to the standard of such currency as is now known as U. S. currency?

Ans. I said in good money $120.

Cross-examination:

1st question by defendant Effinger. I believe you bought a lot adjoining the town of Harrisonburg. What did you pay per acre for it, how many acres were in it, and state whether or not you have recently sold it; and, if you have, at what price per acre? I refer to the lot adjoining the Farneyhough lot.

Ans. I have bought small lots, not exceeding an acre, in town. The lot adjoining the Farneyhough land is not in Harrisonburg, and does not adjoin the corporate limits of Harrisonburg, but is at least a quarter of a mile from the corporation line. It is over a mile from the court-house, or at least a mile. I gave $27.50 per acre for that lot, I reckon thirty years ago. There were five acres and a fraction in the lot. I sold it the first of January (this month) for $350.

2nd question by same. Had you improved the land any?

Ans. Yes, sir; I had.

3rd question by same. In the high state of improvement to which you had gotten it, how would it compare in its cropping capacity with the farm in controversy?

Ans. It would be about the same at this time.

4 question by same. I suppose you considered the lot well sold at $60 per acre, or you would not have sold it?

Ans. Well, I had the offer to purchase since last spring, and
96 I would not sell, and they never would have got it at that price if I had had a road to get to it. That is the reason I sold it. There is a miserable road to it.

5 question by same. Mr. Royer, you consider lands worth more during the war than they were before the war; or during the war did you consider them worth less, by reason of the uncertainty as to loss of crops, fencing, &c., and horses and hands being carried off?

Ans. I would make no difierence during the war or before the war.

6th question by same. If that Bryan farm on the 30th of March, 1863, had been offered for sale payable in specie in hand, do you know any one who would have given $35 or $40 per acre for it?

Memo. Question objected to, as not relevant to the case.

Ans. I don't know that I can answer that question. I did not know of any one who would have given it, but I would rather have money in land during that time than anything else.

7 question by same. Who announced the terms of sale, and when was the sale?

Ans. William Furry, the auctioneer. I have not any record of the time of the sale. I don't recollect the month, and do not know from my own recollection whether it was in 1862 or 1863. I know that Furry stood between the house and the barn when he announced the terms.

8 question by same. Were the terms written or printed?

Ans. I won't be positive, but it seems to me it was from a newspaper.

And further this deponent saith not.

E. ROYER.

JAMES STEELE, another witness of lawful age, introduced on behalf of the complainant, having been by me first duly sworn, deposes and says:

1st question by complainant's counsel. State your age, residence in relation to the land referred to in this cause, what advantage you have had in the way of understanding the value of lands, and how long you have known the farm in controversy?

Ans. I am 52 years of age, and have resided two miles from the Bryan "home farm" from 1830 to the present time. I have been a farmer; was raised upon a farm, and a close observer of the different qualities of land in the country.

2d question by same. Were you present at the sale by Kenney, trustee, of the Bryan "home farm," at which Mr. Effinger was purchaser?

Ans. I was.

3rd question by same. What was the value of that farm per acre, with relation to U. S. currency, or good money, as a standard of value at that time?

Ans. I am hardly able to tell what it would have been worth at

that time in U. S. currency, or what I would have given. It sold for more in U. S. currency at the time of sale than it would
97 have brought in good money. It is right hard for me to say what it would have in good money. I regarded the land, from its location, the character of its soil, improvements, water, and other conveniences, as very valuable. I would think that land ought to have been worth in good money from $135 to $140 per acre, from its location and the prospective view I took of it.

4th question by same. Did you hear the terms of sale announced? If so, state them.

Ans. I did. The terms for the real property was that the purchaser could pay two-thirds in Confederate money, I think, and the balance in such currency as Mr. Bryan's creditors would take.

Memo. Def't, J. P. Effinger, objects to the answer, on the ground that it undertakes to vary the written terms of sale. The written terms of sale signed by Kenney, trustee, and the purchaser, is the best evidence.

5th question by same. Can you remember when this balance which you speak of as to be paid in such money as Mr. Bryan's creditors would receive was to be paid?

Memo. Question objected to by def't Effinger, upon the ground that the bond shows at what time it was to be paid, and to elicit testimony to change the written terms of the contract.

Memo. Compl't's counsel has no objection to the bond showing when it was to be paid, and waives question.

6th question by same. State if you saw Mr. J. P. Effinger at the announcement of the terms on the ground.

Ans. I don't remember whether I did or not. I saw him while the bidding was going, pretty early in the bidding and at the end of the bidding.

7th question by same. Did you hear any conversation with Mr. A. S. Gray as to the terms of this last payment in the hearing of Mr. Effinger?

Ans. Yes, sir. I heard Maj. Gambill and Col. Gray talking. I was a little closer to them than Mr. Effinger at the time; they were not talking low; they talked loud enough for me to hear it. Col. Gray's and Gambill's objection to bidding again (I think that the land was going at $214), was that ⅓ was a good money payment.

Memo. Question and answer objected to by def't, J. P. Effinger, as being improper.

Cross-examination:

1st question by def't Effinger. Don't you consider $210 per acre in 1863, (March 30th), a big Confederate price for that Bryan Home Farm?

Ans. I did not think so on that day.

2nd question by same. Do you know of any one who on that day

would have given as much as $40.00 in gold per acre in hand for that land?

98 Memo. Question objected to by compl't's counsel, because question is not what anybody would have given in hand in gold, but the value of the land in good money, or U. S. money, for example. The land may have been worth $500 per acre in gold, and yet no one have had $100 in gold on the ground.

Ans. I do not.

3d question by same. If the terms of that sale had been payable in specie, ⅔ds in hand and ⅓ in two years, with interest from date, what would it have brought per acre?

Memo. Question objected to by compl't's counsel for reasons given above.

Ans. I don't know, sir.

And further this deponent saith not.

JAMES STEELE.

JANUARY 20TH, 1877.

(Name of witness not given.)

1 question by compl't's counsel. Are you acquainted with the farm which Jacob P. Effinger purchased from James Kenney, trustee, in March, 1863?

Ans. I am; very well; I have known it for 25 years or more.

2d question by same. How near have you lived to it?

Ans. I have lived for 25 years within half mile of it, and for three years during that time I lived on the farm as overseer for Mr. Bryan.

3d question by same. What condition was the farm in at the time it was sold to Effinger, and how had Mr. Bryan been taking care of and cultivating it?

Ans. The farm was in very good condition, was well taken care of, and under good fencing. He hauled right smart manure from town on the farm.

4th question by same. What was the condition of the buildings?

Ans. The brick house was in rather a bad condition. It was cracked, and they had to prop it. The log-house, the wash-house, the smoke-house, and the barn were all in good repair.

5th question by same. What is the condition of the brick house now?

Ans. It has been repaired, so I believe they consider it safe to live in it now; they did not before.

6th question by same. What sort of a building was the dwelling-house?

Ans. I suppose it was about 40 x 24 or 26 feet—four rooms below, and I think the same number above, in the main building; there was an L with a dining-room and kitchen in it.

7th question by same. What was the fair value of that farm in good sound currency in 1863, when it was sold?

Ans. I suppose it would have brought $100.00 per acre, for there was not a foot of it that was not tillable.

Cross-examination:

Question by J. P. Effinger. What was that land worth in
99 good money, immediately before the war—in good money?

Ans. I would think there would be little or no difference from the value I have put upon it in 1863.

8th question by same. Do you know any one who would have given that price in cash before the war?

Ans. No, sir; I do not; I did not hear of any one.

9th question by same. If the terms at the time of the sale had been specie, payable ⅔ in hand and ⅓ in two years, with interest from date, would it have sold for as much as $40 per acre.

Ans. I think so, sir.

10th question by same. Do you know of any one who had that amount of specie to invest in land?

Ans. I do not, sir.

11th question by same. Don't you know that the 30th of March, 1863, was rather a ticklish time for a man to invest specie; he would rather hold on to it?

Memo. Question objected to by compl't, as irrelevant.

Ans. Yes, sir; I think it was the order of the day to hold on to specie.

And further this deponent saith not.

JAMES S. VANPELT.

Depositions for Def't.

MAY 23D, 1877.

SAMUEL SHACKLETT, a witness introduced by def't, being duly sworn, deposes and says:

1st question by def't. Are you acquainted wth the home farm of Allen C. Bryan, which J. P. Effinger purchased of James Kenney, trustee, on the 30th of March, 1863; and, if so, how long have you known it?

Ans. I am somewhat acquainted with it. I have often walked over it, both before Bryan bought it and afterwards. I have known it for 30 or 40 years.

2d question by same. What was that land worth per acre in good money before the war, and at the time of the sale, upon the following payments, viz: ⅓ in hand, the residue in two equal annual payments, with the privilege to the purchaser of paying ⅔rds in hand, the deferred payments bearing interest from the day of sale?

Ans. My judgment would be that that land was worth about $100.00 per acre in good money before the war. When I was told how Effinger had bought it, I remarked that I would not bind myself to pay $70.00 per acre in gold, payable after the war, with interest, for it.

3d question by same. What do you suppose that land would

have brought upon these terms, payable in gold, at the time it was sold?

Ans. I would be at a loss to price it. I would not know what to put it at.

Cross-ex'd:

Question by complainant's counsel. What did you allude
100 to when you made the remark about $70.00 in gold, and when did you make the remark?

Ans. Well, I considered the condition the country was in, and I made the remark the same day Effinger bought.

2d question by same. Why did you speak of $70 in gold, payable after the war?

Ans. Because I thought it doubtful what sort of funds he would have to pay it in, in the end, from all I could hear about it.

3d question by same. Was the intrinsic fair value of the property less or more in 1863 than in 1860?

Ans. Well, everything was unsettled then, and I would not know how to settle it; some one might think one way, and another, another.

And further this deponent saith not.

SAMUEL SHACKLETT.

SEPT. 18TH, 1877.

JACOB P. EFFINGER, the defendant, examined as a witness on his own behalf, having been by me first duly sworn, deposes and says:

Memo. Counsel for complainant objects to the introduction of witness, on the ground that he has been already examined in this cause.

Memo. Defendant's counsel replies that this examination is only designed as a reply to evidence on behalf of complainant, taken since he (the defendant) was last examined.

1st question by defendant's counsel. State whether or not the auctioner, Wm. Furry, who cried the sale of the A. C. Bryan "home place," in the bill and proceedings mentioned, announced any other terms of sale than the printed and published terms of sale, on the day of sale?

Ans. He did not, that I heard.

2d question by same. State whether or not James Kenney, the trustee, or Wm. Furry, the crier, or any other person at that sale on the day of sale, informed you, or intimated to you, that the last payment on the farm could only be made, or would only be received by the trustee in such money as Allan C. Bryan's creditors would agree to take?

Ans. Wm. Furry has never intimated anything of the sort to me, at the time of the sale or since the sale. James Kenney said nothing of the sort at the sale, and never intimated anything of the sort, or said anything of that sort to me, and I never heard of his intimating any other terms to any one else until since the war. The only

conversation between Mr. Kenney and myself on the day of sale was, I asked him to reread the terms of sale, and after it was knocked off to me, he came to me and wrote on the back of the written terms of sale that I had become the purchaser of the "home farm" according to the written terms of sale, and observed to me that it was usual at a sale of that sort to take the purchaser's acknowledgment that he had purchased the land at the price and the terms. He
101 wrote the endorsement in pencil, and I signed in pencil. Before I made a bid upon the land I asked him (Kenney) if he would receive the whole of the purchase-money in cash—meaning if it suited me to pay it. His reply was that he would see if he could make his arrangements to take it all, and if he could do so he would, and he thought he could do so, and I never heard from any other person any other than the written terms of sale, or any intimation of any other terms, until since the war.

3d question by same. State whether or not you ever told Dr. A. M. Newman, in front of Wise's store, in Harrisonburg, in the summer or fall of 1864, or anywhere else, at any time since you purchased said farm, that you would endorse upon the last bond you gave for said farm that it was not to be paid in Confederate money?

Ans. I never did. I had no conversation with him in the spring or fall of 1864, but I suppose he refers to a conversation which occurred between us in the latter part of April or 1st of May, 1865, in the storeroom of "Shacklett & Newman," in Harrisonburg, (firm in which he, Newman, was a partner). Newman called me into the store, and said that he wanted some money, and did not know how to raise it without calling upon me; that Harvey Kyle would be at home shortly, and he had some interest money to pay to him, and he must have it. I asked him what right he had to call on me for money. He said he had my bond, executed to James Kenney, trustee, for the last payment on the land I bought; that it was given to him as additional security to him as endorser for Allan C. Bryan. I told him I had no money. He then observed, "Of course you don't expect to pay it now in Confederate money." I replied to him, "Of course you would not take Confederate money now." He then asked me to make an endorsement on the bond that it was not payable in Confederate money, and he would get Kyle to take the bond and release him. I told him I would do no such thing, but if he would produce the bond I would make such endorsement on it as suited me. He asked me then how I expected to arrange or settle that bond. I told him I supposed the Legislature would make some provision as to debts of that sort.

4th question by same. State whether or not you ever made any such remark, agreement, or proposition to Dr. Harvey Kyle (to make such endorsement on that bond).

Ans. I never did. He made a proposition to me; he proposed in the spring of 1864 that they wanted him to take my land bond (that Newman and Kenney wanted him to take my land bond), and that if I would make the endorsement upon that bond, that it was not payable in Confederate money, he would take the bond and indulge me upon it 10 or 12 years, or as long as I might want it, by paying the

interest promptly. I replied to him, I was very much obliged for his kind proposition. "You had better get the bond, Doctor,
102 and then we will talk about it. You had better get the bond before you make the proposition."

5th question by same. State whether or not you ever said to A. W. Jones, on the day of sale of said farm, and during the progress of the sale, or at any other time, that if the land went at $300 it would not be too high, tho' the last payment was to be made in good money, for it was worth $100 in good money, or anything of that kind?

Ans. I had no conversation with Mr. Abner W. Jones on the day of sale. Some few days after the sale he approached me as the friend of Maj. L. W. Gambill and his brother, David H. Gambiil, and proposed purchasing the farm from me, taking my place, and paying me $300 for my purchase. I told him if he would pay me $300 per acre he could have it, thereby making light of his proposal to purchase. He told me that he wanted the farm for Maj. Gambill and his brother, David H. Gambill.

And further this deponent saith not.

J. P. EFFINGER.

Again. October Term, 1878.

This cause came on to be heard this 29th day day of November, 1878, on the bill, exhibits, answers, replications, and depositions, and was argued by counsel. On consideration whereof, the court is of opinion that the contract between the plaintiff and defendant, J. P. Effinger, for the sale and purchase of the tract of land mentioned in the bill was made and entered into with reference to Confederate States treasury notes as a standard of value, and that the fair value of the property on the day of sale would be the most just measure of recovery in this cause; and being further of the opinion that the fair value of the property on the day of sale, in United States currency, was eighty dollars per acre, and two-thirds of the purchase-money being paid in cash at the time of the sale, it is therefore adjudged, ordered, and decreed that the complainant recover of the defendant, J. P. Effinger, two thousand six hundred and ninety-two dollars and thirty-three cents, with legal interest thereon from the 30th day of March, 1865, till paid, and his costs in this behalf expended, the quantity being 100¾ acres and 34 poles. And it is further adjudged, ordered, and decreed that unless the said defendant, or some one for him, shall pay off and satisfy this decree within 60 days from the rising of this court, then J. N. Liggett and Wm. B. Compton, who are hereby appointed commissioners for the purpose, are authorized to sell the said tract of land, or so much thereof as still remains in the hands of said J. P. Effinger, or such part thereof as may be necessary, at public auction, on the following terms, viz., cash in hand, or on confirmation of sale, sufficient to pay costs of suit and sale; the residue in four equal annual payments, bearing interest from the day of sale, taking from the purchaser or purchasers bonds, with good personal security, and retaining a lien as further security, but not until at least four weeks'

notice of the time, terms, and place of sale shall be given in one or more newspapers of said county and by handbills duly posted.

And said commissioner may sell in such parcels as to them
103 shall seem proper, and before receiving any money under this decree they, or either of them, shall execute bond in the penalty of double the amount to be received, conditioned according to law, with approved security. And they shall report their action to the court. And the right is reserved to the complainant to apply for future relief against the purchasers of that part of the land which has been sold off by said Effinger. But this decree, so far as a sale of the land is directed, is not to be executed until the case of Harvey Kyle, &c., *vs.* Bryan's Trustee shall be determined, unless otherwise ordered.

STATE OF VIRGINIA, *Rockingham County,* } *To wit:*

I, J. H. Shue, clerk of the circuit court of Rockingham county, do hereby certify that the foregoing is a correct transcript of the record and papers in the chancery cause of James Kenney, trustee, &c., *vs.* J. P. Effinger, so far as copies were required, and as they now appear in my office.

Given under my hand, this 2nd day of August, 1879.

J. H. SHUE,
C. C. C. R. C.

A copy. Teste: JOS. A. WADDELL,
Clerk Supreme Court of Appeals, Staunton.

104 VIRGINIA:

In the Supreme Court of Appeals, held at the Court-House of Augusta County, at Staunton, on Friday, the 14th day of October, 1881.

JACOB P. EFFINGER, Appellant,
against
JAMES KENNEY, Trustee of Allen C. Bryan, Hester, wife of said Jacob P. Effinger, and A. M. NEWMAN, Appellees.

Upon appeal from and supersedeas to the decree of the circuit court of Rockingham county, pronounced November 29, 1878, in the chancery cause then therein depending, of Kenney, trustee, *vs.* Effinger & wife.

This day came again the parties, by their counsel, and the court having maturely considered the transcript of the record of the decree aforesaid, and the arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the said decree. Therefore it is decreed and ordered that the same be affirmed, and that the appellee, James Kenney, trustee, &c., recover against the appellant damages according to law, and his costs by him about his defense in this behalf expended.

105 Which is ordered to be certified to the said circuit court of Rockingham county.

A copy. Teste: JOS. A. WADDELL, *Clerk.*

106 VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals, at Staunton, on the 16th day of March, 1882.

I, Jos. A. Waddell, clerk of the court aforesaid, in obedience to the mandate of a writ of error awarded by the Hon. Stephen J. Field, Justice of U. S. Supreme Court, dated the 23d day of February, 1882, in the case of Jacob P. Effinger *vs.* James Kenney, trustee of Allen C. Bryan, which is herewith returned, do certify that the printed pages hereto annexed, numbered from one to ninety-nine, inclusive, and the manuscript copy of the final decree of said court also hereto annexed, contain a true transcript of the record in the case of Jacob P. Effinger, appellant, *versus* James Kenney, trustee of Allen B. Bryan, & *als.*, appellees, as the same remain on the files of the said supreme court of appeals. I also return the citation and a copy of the bond.

I further certify that the supreme court of appeals of Virginia is the highest court of law and equity in the said State in which a decision can be had.

In testimony whereof, I hereunto subscribe my name as clerk of the said supreme court of appeals of Virginia, at Staunton, there being no official seal of said court.

JOS. A. WADDELL, *Clerk.*

107 To the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States:

The petition of James Kenney, trustee of Allen C. Bryan, of Rockingham county, Virginia, respectfully represents and shows to the Court that he is aggrieved by a final decree pronounced by the supreme court of appeals of Virginia on the 14th day of October, 1881, in the case of Jacob P. Effinger, appellant, *vs.* James Kenney, trustee of A. C. Bryan, and others, appellees, affirming a decree of the circuit court of the county of Rockingham, pronounced on the 29th day of November, 1878, in the chancery cause of James Kenney, trustee of A. C Bryan, *vs.* Jacob P. Effinger, &c.

A transcript of the record of the proceedings in said cause, and of the decree complained of, is now pending before the Supreme Court of the United States upon a writ of error awarded by the Honorable Stephen J. Field on the — day of ——, 1882, on the petition
108 of said Jacob P. Effinger, returnable to the 1st Monday in October, 1882, and is respectfully referred to; from which it will appear that the case is as follows:

On the — day of ——, 1860, A. C. Bryan executed to James Kenney a deed of trust, conveying his real and personal property to secure certain creditors therein named. See trust deed.

On the 30th day of March, 1863, said James Kenney, as trustee, sold the home farm, containing about 100 acres of land, to Jacob P. Effinger, at the price of $210 per acre, two-thirds of which the said purchaser had the privilege of paying in the depreciated currency circulating in Virginia, known as Confederate States treasury notes; but the remaining one-third of the purchase-money was not to be

paid in Confederate treasury notes, but in such currency as would pay off the judgment liens existing on the property prior to
109 the execution of the trust deed, and which were payable only in good legal tender money.

After the close of the war, and after the purchase-money became due, the said James Kenney, as trustee, instituted his suit in equity in the circuit court of said county of Rockingham, to recover the amount of the bond for $7,067.70⅔, executed by said Effinger for the said one-third of said purchase-money, he having paid the other two-thirds in cash at the time of the sale in 1863. The circuit court of Rockingham, instead of allowing the full amount of the bond as claimed by said Kenney, trustee, fixed the amount of the recovery with reference to the value of the land in good money, estimating that value at $80 per acre, although the land was never at any time worth less than $100 per acre in good money. From said decree the said Effinger appealed to the supreme court of appeals of Virginia, claiming that he was aggrieved by said decree in not scaling
110 the bond to its gold value. Said Kenney, trustee, also united in insisting that the decree complained of was erroneous in not allowing him the full nominal amount of the bond, and on the contract being as hereinbefore set forth. No cross-appeal was necessary under the practice in the Virginia courts; but the whole question came up before said supreme court of appeals of Virginia, as to whether either appellant Effinger, or appellee Kenney, was entitled to relief against said decree, or was prejudiced thereby.

The said court of appeals was of opinion that there was no error in the decree of the circuit court of Rockingham, either against appellant or appellee, and affirmed the decree of the circuit court; and thereupon the said Jacob P. Effinger applied to one of the justices of the Supreme Court of the United States for a writ of error, which was accordingly awarded on the ——— day of ———, 1882, and the citation issued and made returnable to the 1st Monday in October, 1882.

111 And your petitioner being advised that under the rules of practice in the Supreme Court of the United States, it may be necessary, or proper, in order to present his view of his case, and be entitled to the relief against said decree, which he believes himself entitled to, that a cross-appeal should be taken, or a petition assigning errors in the record prejudicial to his rights should be presented to the court and considered at the hearing, and to assign the following errors in the decree of the supreme court of appeals of Virginia, viz:

1st. The said supreme court of appeals of Virginia erred in affirming the decree of the circuit court of Rockingham county, and in ascertaining and determining that the bond sued on was payable in Confederate States treasury notes, and therefore liable to be reduced or scaled.

2nd. Said supreme court of appeals of Virginia erred in refusing to reverse the decree of the circuit court of Rockingham Co., and allow to your petitioner the full amount of the bond sued on,
112 said bond being, according to the true understanding and agreement of the parties not payable in Confederate States

treasury notes, but on the contrary being payable only in good money, or United States currency, and, therefore, not liable to be reduced.

For these and other reasons apparent in the record, your petitioner prays that the decree of the said supreme court of appeals of Virginia, affirming said decree of the circuit court of Rockingham Co., may be reviewed, reversed, and set aside, and that your petitioner may be decreed the full amount of the bond sued on. And, as in duty bound, he will ever pray, &c.

JAMES KENNEY, *Trustee, &c.*,
By his counsel, W. B. COMPTON.
Sept. 27, 1882. J. N. LIGGET.

Endorsed: Cross-appeal allowed. S. J. Field, Asso ciate Justice U. S. Sup. Court. Oct. 17, 1882.

113 Know all men by these presents that we, James Kenney, trustee of A. C. Bryan, and D. M. Switzer, are held and firmly bound unto Jacob P. Effinger in the full and just sum of ($250) two hundred and fifty dollars, to be paid to the said Jacob P. Effinger, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 24th day of October, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately, at a supreme court of appeals of Virginia, held at Staunton, Va., in a suit depending in said court between Jacob P. Effinger, appellant, and James Kenney, trustee of A. C. Bryan, appellee, a decree was rendered against the said James Kenney, trustee, from which an appeal was taken by said J. P. Effinger; and the said James Kenney, trustee, having also obtained a cross-ap-
114 peal, and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said Jacob P. Effinger, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such, that if the said James Kenney, trustee, shall prosecute said cross-appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES KENNEY, *Trustee.* [SEAL.]
D. M. SWITZER. [SEAL.]

Sealed and delivered in presence of—
R. S. SWITZER.

Approved by—

W. B. LURTY,
Clerk of U. S. Courts, Western District of Virginia,
Harrisonburg, Va.

Endorsed: Approved. Field, J. Oct. 30, 1882.

115 The United States of America to Jacob P. Effinger, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein James Kenney, trustee of Allan C. Bryan, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable —— ——, of the Supreme Court of the United States, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and eighty-two.

STEPHEN J. FIELD,
Associate Justice of U. S. Sup. Court.

116 I, Jacob P. Effinger, hereby acknowledge service of the within citation or process.

November 4th, 1882. J. P. EFFINGER.

117 VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals of Virginia, at Staunton, on the 25th day of November, 1882.

I, Jos. A. Waddell, clerk of the court aforesaid, do certify that the foregoing manuscript, commencing on page 1 and ending on page 6, is a true copy of the petition of James Kenney, trustee, to the Supreme Court of the United States, filed in this office November 2, 1882, on cross-appeal in the cause therein named. I herewith return the citation, with acknowledgment of service endorsed thereon, and a copy of the appeal bond on file in my office.

In testimony whereof, I hereunto subscribe my name as clerk of the said supreme court of appeals, at Staunton, the said court having no official seal.

JOS. A. WADDELL, *Clerk.*

Fees due from James Kenney, trustee, to Jos. A. Waddell, clerk, $2.50.

118 UNITED STATES OF AMERICA, *ss:*

[SEAL] The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of judgment of a plea, which is in the said supreme court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Jacob P. Effinger, appellant, and James Kenney, trustee of

Allan C. Bryan, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Consti-
119 tution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said James Kenney, trustee of Allan C. Bryan, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twentieth day of December, in the year of our Lord one thousand eight hundred and eighty-two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
STEPHEN J. FIELD,
Associate Justice of U. S. Sup. Court.

119½ [Endorsed:] A copy of the within filed in the clerk's office of the supreme court of appeals of Virginia, at Staunton, Dec. 30, 1882. Jos. A. Waddell, clerk.

120 United States of America to Jacob P. Effinger, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein James Kenney, trustee of Allan C. Bryan, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness Stephen J. Field, Associate Justice of the Supreme Court of the United States, this twentieth day of December, in the year of our Lord one thousand eight hundred and eighty-two.

STEPHEN J. FIELD,
Associate Justice of U. S. Sup. C't.

121 On this 26th day of March, in the year of our Lord one thousand eight hundred and eighty-three, personally appeared D. H. Rolston before me, the subscriber, W. B. Lurty, clerk U. S. court, and makes oath that he delivered a true copy of the within citation to Jacob P. Effinger.

Sworn to and subscribed, the 26th day of March, A. D. 1883.

W. B. LURTY,
Clerk U. S. Court.

122 KENNEY, Trustee, *vs.* EFFINGER.

This is a suit to enforce a vendor's lien for a bond of $7,067.70⅔, executed by the def't, Jacob P. Effinger, to the complainant, dated March 30th, 1863, & payable on the 30th March, 1865, with interest from its date, it being for the last payment for land sold at public auction by said Kenney, trustee for A. C. Bryan, and purchased by the defendant. The price at which Effinger purchased the land was $210.00 per acre; he paid $14,135.00 in hand, or in a short time after the date, and gave his bond for $7,067.70⅔, the residue of the purchase-money. The first question presented is, Was the contract for the sale & purchase of said land a Confederate contract as to the third instalment, or was it a contract for good money?. As to the two first instalments, there can be no controversy, because they were paid & received in Confederate treasury notes on the day of sale, or in a short time thereafter, according to the advertisement of the land. The terms of sale were one-third in hand and the remainder in two equal annual payments, with interest on the deferred payments from the day of sale, with the privilege to the purchaser of paying the first deferred payment also in hand. The defendant availed him-

123 self of the privilege accorded to the purchaser, & paid the first & second instalments in Confederate money. Nothing was said in the published advertisement as to the kind of currency in which the purchase-money was to be paid, but from the fact that that kind of currency was paid and received on the first and second payments, and in the absence of satisfactory proof that the last instalment was to be paid in any other bond of currency, we must conclude that there was to be no difference in respect to that matter between the first & second & the last instalment-. The transaction which is the subject of this suit was the subject of investigation in a suit at law upon said bond in the county court of Rockingham, in which there was a verdict and judgment against the defendant and for the whole amount of the bond. There was a supersedeas from the circuit court of Rockingham to the judgment of the county court, and the judgment of the county court was affirmed; and from the judgment of the circuit court affirming that of the county court there

was a supersedeas from the court of appeals. (Effinger *vs.* Kenney, 24 Gratt., 116.) The court of appeals, upon the facts certified by the county court, decided that said contract was a Confederate transaction, and that the verdict of the jury for the amount of the bond was plainly contrary to the law and evidence and unjust and oppressive, and
124 ought to have been set aside and a new trial granted. The judge of the circuit c't, affirming that of the county court, was therefore reversed, and the court, proceeding to render such judgment as the county court ought to have rendered, reversed the judge— of the county court, set aside the verdict, granted a new trial, & remanded the case to the circuit court for further proceedings to be had in conformity with the principles therein declared. After the case came back to the circuit court there was a nonsuit, & the case went off the docket. This suit was then brought to enforce the vendor's lien for the last instalment. A vast amount of testimony on both sides has been taken, but there is nothing in the evidence, so far as I can discover, to strengthen the case in favor of the complainant. On the contrary, I am of opinion that the evidence to prove that it was a Confederate contract is much stronger in this case than it was in the case that went to the court of appeals. Since the case was decided in the court of appeals the written terms of sale have been found, and upon them is endorsed the memorandum of sale, signed by the defendant, in the following words: "I have become the purchaser of the home tract, according to the within conditions, at the price of two hundred and ten dollars per acre." These conditions are the same as the terms of the printed and pub-
125 lished advertisement, and, with the said memorandum signed by said defendant, constituted the contract between the parties. The terms of this written contract cannot be changed or modified by proof of a verbal or parol contract. The written contract furnishes the best evidence of what the parties intended. In addition, the evidence does not show that the defendant ever assented to the alleged change in the conditions of sale as to the kind of currency in which the last instalment was to be paid. If such a change was made & announced on the day of sale, a knowledge of that fact has not been brought home to the defendant, and any presumption or inference to the contrary is repelled by the memorandum of sale signed by the defendant.

Regarding it, therefore, as a Confederate contract, the only remaining question is, what is the extent of the defendant's liability. Upon the question as to the value of the land at the time of the sale there is a great deal of testimony, and, as usual in questions of this kind, there is great diversity of opinion among the witnesses. The witnesses are of equal credibility, & possessed of about the same means of forming an opinion upon the subject. Embarressed by this irreconcil-ble conflict of opinion among witnesses of equal intelligence and alike worthy of credit, how is
126 the court to arrive at any definite or satisfactory conclusion. When a controversy arises between two parties, each naturally looks out for such testimony as will enable him to sustain his side of the case. He will select such witnesses as

he believes or knows are under the influence of friendship for him or of prejudice to the adverse party, and who, from these and other causes, will testify in his favor. After this *lis motes* the friends and acquaintances of the parties are apt to take sides & to have their feelings & sympathies enlisted in the controversy. The human mind is so constituted that it is often, unconsciously to its possessor, under influences that bias and mislead the judgment. The witness may be perfectly honest, but yet may be controlled by influences of which he is utterly unconscious to understand. How shall we escape from this sea of conflicting opinions? To undertake to enter into a nice and central analysis of the testimony, comparing the testimony of one witness with that of another and determining which is entitled to the greatest weight, would be a vain and useless task. The mind would soon be involved in a labyrinth of doubts and difficulties from which it would be impossible to escape. The only conclusion that could be arrived at would be that the true value of the land was somewhere between the two extremes—the highest and lowest value placed upon it by the witnesses—but these two extremes
127 are so wide apart that we would be no nearer to a satisfactory result than when we commenced our labors. We must, therefore, get out of the difficulty in some other way. Before this controversy arose sworn officers of the law, for the purposes of taxation, assessed this land. It cannot be presumed that they were under any improper influence to cause them to assess it either too high or too low. It was assessed at $80.00 per acre before the war. From its location & the quantity of the land and the improvements upon it, & from the fact that it was assessed by a sworn & disenterested officer of the law, I think we may safely say that it was a fair and reasonable valuation. I am further of opinion that it was worth $80.00 per acre at the time of the purchase. Whilst the war had a tendency to impair the value of all kinds of property, yet as to lands that tendency was concentrated by the fact that they were not liable to be destroyed, & therefore afforded a safer means of investment than other kinds of property. I do not think the debt ought to be scaled, but that the "most just measure of recovery" is the fair value of the land. Having paid two-thirds of the purchase-money, which is equivalent to $\frac{2}{3}$ of the land, the defendant must pay for one-third of the land at $80.00 per acre, with interest thereon from the expiration of two years from the
128 date of the bond, the interest for two years having been paid by him. The case of Stearns *vs.* Mason differs materially in its circumstances from this case. In the former two of the judges, Montcure & Christian, dissented from the majority on the question of interest. The property in that case was destroyed by fire before the maturity of the bonds, and the purchaser in the meantime had no use of the property. Judge Anderson, who delivered the opinion of the court, says, "but if he had the use and derived a profit from the property it would have had an important bearing upon the question of interest." In the case under consideration the defendant was put into possession, & has continued to enjoy the use of the property from the day of sale until the present. If he had brought

a suit to rescind the contract, and it had been proper to do so, he would have been justly chargeable with rents and profits. As, however, the contract is not to be rescinded, he is bound to pay interest on what he justly owes.

MARK BIRD.

I hereby certify that the foregoing is a true copy of the opinion of Judge Mark Bird in the chancery suit of Kenney, trustee, *vs.* J. P. Effinger.

A. N. BLACK,
Clerk C. C. R. C.

129 [Endorsed :] Jas. Kenney, trustee, *vs.* Jacob P. Effinger. In chancery. Opinion. Costs, $1.50. Supreme Court U.S. 1883, October term. No. 651. Jacob P. Effinger, pl'ff in error, *vs.* James Kenney, trustee of Allan C. Bryan. Certified copy of opinion of county court. Office of Supreme Court U. S. - Filed Dec. 10, 1883. James H. McKenney, clerk.

Endorsed on cover: Virginia sup. court of appeals. No. 309. Jacob P. Effinger, plaintiff in error, *vs.* James Kenney, trustee of Allan C. Bryan. Filed 6th October, 1882. And cross-writ: No. 496. James Kenney, trustee of Allan C. Bryan, plaintiff in error, *vs.* Jacob P. Effinger. Filed 14th April, 1883.

115-566,577

OFFICE SUPREME COURT, U. S.
FILED
AUG 22 1885
JAMES H. MCKENNEY,
CLERK.

—IN THE—

Supreme Court of the United States,

OCTOBER TERM, 1884.

NO. 309.

JACOB P EFFINGER, Plaintiff in Error,

vs

JAMES KENNEY, Trustee of Allen C. Bryan

BRIEF BY PLAINTIFF IN ERROR.

This cause comes up by writ of error to the Supreme Court of Appeals of Virginia under section 709 of the Revised Statutes of the United States.

THE CASE.

See Record page 107, Judge Bird's written opinion.

This is a suit to enforce a vendor's lien for a bond of $7,067.70½, executed by J. P. Effinger, the plaintiff in error to James Kenney, Trustee, dated March 30th, 1863, and payable March 30th, 1865, with interest from its date, it being for the last payment for land sold at public auction by said Kenney, Trustee for A. C. Bryan, and purchased by said Effinger. The price at which Effinger purchased the land was $210.00 per acre; being for a tract of land of 100½ acres and

24 poles, $21,203.10 for the farm, of which sum Effinger paid in Confederate treasury notes $14,135.40, and gave his bond for $7,067.70⅔, the residue of said purchase money.

The first question presented is, was the contract for the sale and purchase of said land a Confederate contract as to the third instalment, or was it a contract for good money?

As to the two first instalments there can be no controversy because they were paid and received in Confederate treasury notes, according to the advertisement of the land.

The written *terms of sale* were, one-third in hand and the remainder in two equal annual payments, with interest on the deferred payments from the day of sale, with the privilege to the purchaser of paying the first deferred payment also in hand. Effinger availed himself of the privilege accorded to the purchaser, and paid the first and second instalments in Confederate money. Nothing was said in the published advertisement or in the written terms of sale as to the kind of currency in which the purchase money was to be paid, but from the fact that that kind of currency was paid and received on the first and second payments, and in the absence of satisfactory proof that the last instalment was to be paid in any other kind of currency, we must conclude that there was to be no difference in respect to that matter between the first and second and the last instalment.

The transaction which is the subject of this suit was the subject of investigation in a suit at law upon said bond in the County Court of Rockingham in which there was a verdict and judgment against Effinger for the whole amount of the bond. There was a supersedeas from the Circuit Court of Rockingham to the County Court, and the judgment of the County Court was affirmed, and from the judgment of the Circuit Court affirming that of the County Court there was a supersedeas from the Court of Appeals, (Effinger *vs.* Kenney, Trustee 24 Gratton's Virginia Rep. p. 116.) The Court of Appeals, upon the facts certified by the County Court, did not hesitate in saying that Effinger's payment was worth more to them

than the land was worth. This contract was plainly entered into with reference to Confederate currency as a standard of value and is solvable in that kind of currency. The verdict of the jury is plainly contrary to the law and evidence, unjust, hard and oppressive, and ought to have been set aside and a new trial granted.

The judgment of the Circuit Court affirming that of the County Court, was therefore reversed, and the court proceeding to render such judgment as the county court ought to have rendered, reversed the judgment of the county court, set aside the verdict, granted a new trial, and remanded the case to the circuit court for further proceedings to be had in conformity with the principals therein declared. After the case came back to the circuit court there was a non-suit and the case went off the docket. This suit was then brought to enforce the vendor's lien for the last instalment. See the Courts, (Judge Mark Bird's opinion, Record page 108, 15th line from the top.) A vast amount of testimony on both sides has been taken, but *there is nothing in the evidence so far as he can discover to strengthen the case in favor of the complainant Kenney. On the contrary, he is of opinion that the evidence to prove that it was a Confederate contract is much stronger in this case than it was in the case that went to the court of appeals.*

Since the case was decided in the court of appeals the written terms of sale have been found, and upon them is endorsed the memorandum of sale, signed by the defendant, in the following words: "I have become the purchaser of the home tract, according to the within conditions, at the price of two hundred and ten dollars per acre."

These conditions are the same as the terms of the printed and published advertisement, and with the said memorandum signed by the defendant, Effinger, constitutes the contract between the parties. See rec. p. 53, Effinger's deposition, also rec. p. 24, exhibit X, also see rec. p. 64, Kenney's deposition, cross examination, 1st and 2nd questions and answers, which answers corroborates Effinger's statements.

The terms of this written contract cannot be changed or modified by proof of a verbal or parole contract. The written contract furnishes the best evidence of what the parties intended. In addition, the evidence does not show that the defendant ever assented to the alleged change in the conditions of sale as to the kind of currency in which the last instalment was to be paid. *If such a change was made and announced on the day of sale*, a knowledge of that fact has not been brought home to the defendant, and any presumption or inference to the contrary is repelled by the memorandum of sale signed by the defendant Effinger.

Regarding it, therefore, as a Confederate contract, the only remaining question is, what is the extent of the defendants liability?

The land was assessed before the war by a sworn officer at $80 per acre for taxation (this was at a time when everybody in the South had plenty of money and profound peace and would give almost any price for land.) The Court here become wonderfully bothered about the value of the land and says "as this land was assessed at $80 per acre by a sworn officer before the war he thinks he may safely take it as a fair and reasonable valuation, and is of opinion that it was worth $80 per acre at the time of the purchase. *He does not think the debt ought to be scaled*, but that the "*most just measure of recovery*" *is the fair value of the land.*

Having paid two-thirds of the purchase money, which is equivalent to two-thirds of the land, the defendant must pay for one-third of the land at $80 per acre, with interest thereon from the expiration of two years from the date of the bond, the interest for two years having been paid by him.

The two year's interest was paid by the stern requirements of law. See Effinger's answer to the 6th question, rec. p. 54, his vouchers, 1st receipt for United States Direct Tax paid S. A. Coe, collector. $21.84. Paid to Sheriff, rec. p. 55. *Also*, see J. P. Effinger's account filed *vs.* Kenney, Trustee, rec. p. 56, which shown Effinger has overpaid J.

Kenney Trustee's claim over one thousand dollars.

After said opinion of the circuit court of Rockingham County, Virginia, Judge Bird the Circuit Judge, entered his decree in accordance therewith. See rec. p. 100. On consideration whereof the court is of the opinion that the contract between the plaintiff and defendant, J. P. Effinger, for the sale and purchase of the tract of land mentioned in the bill was made and entered into with reference to Confederate States treasury notes as a standard of value, and that the fair value of the property on day of sale would be the most just measure of recovery in this cause; and being further of the opinion that the fair value of the property on the day of sale, in United States currency, was eighty dollars per acre, and two-thirds of the purchase money being paid in cash at the time of the sale, it is therefore adjudged, ordered and decreed that the complainant recover of the defendant, J. P. Effinger, two thousand six hundred and ninety-two dollars and thirty-three cents, with legal interest thereon from the 30th day of March, 1865, till paid, and his costs in this behalf expended, &c.

From this decree of the circuit court of Rockingham, there was a supersedeas to the Supreme Court of Appeals of Virginia, and was affirmed.

ASSIGNMENT OF ERRORS.

1st. The Supreme Court of Appeals of Virginia erred in sustaining the decree of the Circuit Court, thus deciding in favor of the validity of the Act of Assembly of 1866-7, (sessions acts page 694, sec. 1, chapter 270.)

2nd. The Supreme Court of Appeals also erred in not allowing Effinger credit for the whole amount paid by him, $869 96 instead of only 343 68.

ARGUMENT.

That the validity of said Act of Assembly was drawn in question does not expressly and clearly appear in the record in this case. The court could not have given the judgment it did give without sustaining the validity of the Act of As-

sembly, and this consideration brings the case within the 6th class ef cases, said by this court in 16 Peters, 281, to be within the jurisdiction of this court, though not within the stricter rules laid down in other cases, with all of which this court is so familiar that further reference to them we hope will be unnecessary.

In rendering this decree the circuit court sustained and asserts the validity of the statute of the Virginia Assembly, Acts of 1866-7, chapter 270, sec. 1, page 694, which provides, "that when the cause of action grows out of a sale of renting; or hiring of property, whether *real* or personal, it the court, (or where a jury case,) the jury think that, under all the circumstances, the fair value of the property sold, or the fair rent or hire of it, would be the *most just* measure of recovery in the action. Either of these principals may be adopted as the measure of recovery. This act we claim as coming within the inhibition of the Federal of the State constitution, and is therefore void.

See Wilmington & W. R R. *vs.* King's S C. rep. 91, p. 3 Bissel & Hayward *vs.* S C. rep. 96, p. 581. Cook *vs.* Lillo 103 U. S p. 792. Thorington *vs.* Smith, 8 Wallace, U. S. p. 1.

The court in rendering the said decree virtually declares that the unsettled condition of the country at the time this contract was made and entered into was such that neither the plaintiff nor defendant could make a just and valid contract. The court by said decree makes what it claims a just recovery for the plaintiff, which we claim virtually makes a new contract between the parties not contemplated by either of the contracting parties and is such an interference with the contract as is positively prohibited by article 1, section 10, of the constitution of the United States.

Judge Bird said he would have notning to do with United State's laws or U. S. taxes, nor would he be governed by the rulings of the Supreme Court of Appeals of Virginia. The highest law with him being the statute laws of Virginia

and State taxes.

The Supreme Court of Appeals of Virginia by their order confirming the decree of the circuit court of Rockingham reasserts the validity of, and gives to the Virginia statute (see session acts of 1866-67, chapter 270, sec. 1, p. 694) a force and effect that is repugnant to the constitution of the United States by reason of its impairing the obligation of the contract between Kenney and Effinger in violation of Article 1, sec. 10, of the Constitution of the United States.

We claim that this bond dated March 30th, 1863, ought to be regarded a foreign debt and scaled to its value on the 30th day of March, 1865, as the def't in error. Kenney fixed that time for its payment of principal and interest by refusing to receive payment earlier than that date and by writing the bond as follows:

"On the 30th day of March, 1865, with interest from this day," I promise to pay James Kenney, trustee for A. C. Bryan, seven thousand and sixty-seven dollars, seventy and two-third cents, it being the deferred payment on the home farm of A. C. Bryan, bought by me Given under my hand and seal this 30th day of March, 1863.

J. P. EFFINGER, (L. S)

Which wording *on the 30 day of March*, 1865, stopped the plaintiff from tendering the money in payment thereof, and further, as the said Effinger paid to Kenney on this land, $14,135,40, nearly double the assessed value of the land before the war, which paid dollar for dollar of the oldest judgment liens on the lands of the cestiu quie trusts, thereby making Effinger's payments worth more to them than the land was worth. And as Kenney elected not to receive the money until the 30th of March, 1865, the bond should be scaled with reference to the value of Confederate currency at the maturity of said bond. In the case of Thorington *vs.* Smith, 8 Wallace U. S. p. 1, all the purchase money was to have been paid in hand at the time of sale. Bissel *vs.* Hayward, 96 U. S. p 581,

Wilmington & Weldon R. R. *vs.* King's administrator 91, U S. p. 3. Cook *vs.* Lillo 103 U. S. p. 792

And after a full argument upon the evidence and the law applicable to said cause, the said circuit court held that the contract had been entered into with reference to Confederate States treasury notes as a standard of value; that the said farm was worth $80 per acre at the time of the sale; that the farm contained 100 acres, 3 roods and 34 poles; and that appellee was entitled to recover one-third of $8,077, the value of the land, to-wit: $2,692.33, with interest thereon from the 30th day of March, 1865, and rendered a decree to that effect, refusing to allow appellant credit for the $21 84, U. S. taxes paid by him as aforesaid on said farm for the year 1862, or for the $848.12 paid by him on interest as aforesaid, excepting for two years interest on $2,692,33, amounting to only $323.07, instead of $848.12, actually paid by appellant upon interest on the judgement aforesaid, and $21.84 paid on taxes as aforesaid, thus denying appellant credit for the balance, $545.89 of the $869.96, which he had paid as aforesaid, to which he was justly entitled.

This refusal was based upon the idea that the two judgments $424.06 each, rendered against appellant upon motion for two year's interest upon said judgment as aforesaid, were final and conclusive until reversed, without considering that *the whole debt and interest were already a judgment*, and that judgment was subsequently wholly reversed; and also without considering that if appellant had paid a thousand or more dollars upon said judgment, even voluntarily, it would have been a valid credit upon whatever was subsequently found to be really owing upon said bond of $7,067.70⅞; and that his paying it by compulsion did not destroy his legal or equitable right to such credit.

There might have been some shadow of ground for such a pretension if the two judgments for interest had exceeded the amount subsequently found due upon the debt, and the judgment aforesaid had itself not been reversed. But the reversal

of that judgment would necessarially annul, vitiate, or control everything that had been done by appellee or his assignee, Newman, under or by virtue of said judgment before its reversal, and would leave the payments made by appellant to go as credits upon the debt or bond. Hence it was erroneous for that court to give appellant credit in said decree for two year's interest on $2,692.33, instead of for the whole $848.12 paid on interest as aforesaid, especially as there were $710.77 of interest due on $2,692.33, when the first $424.06 were paid, and there were at that rate, $343.69 of interest due on $2,692,-33, when the second $424.06 were paid, which therefore even paid the interest then due on $2,692.33, leaving $80.37, which should have been credited on the principal.

Appellant ought to have had credit for $424.06 paid August 1st, 1867, $424.06 paid January 1st, 1868, and for $21 84 U. S. taxes paid by appellant as aforesaid.

The payment of $21.84 U. S. taxes for 1862, is evidenced by appellants answer on page 23 of record; his deposition on page 54, and by Coe's receipt on page 55 of record; and the payment of $848.12 on the debt in controversy by exhibits on pages 54, 55 and 56 of said record; and by A. M. Newman's deposition in answer to 21st question on page 74 of record, he there admits he received two year's interest on this debt, and is also admitted by appellee in his bill at bottom of record page 20 These three payments by appellant, of $869.69, is not controverted, yet he received credit for only $343.68 thereof, which is unjust, unreasonable and unauthorized by law or equity

The Supreme Court of Appeals erred in refusing to scale this debt to its value in U. S. dollars at the time and place where due and payable. W. & W. R. R. *vs.* King's 91, U. S. p. 3. Bissel *vs.* Hayward, U. S. 96, p. 581. And by giving judgment for one-third of the assessed value of the land before the war, thereby giving effect to, and sustaining as valid and constitutional the Virginia adjustment act. See Va. sessions acts of 1866.7, chapter 270, page 694. By the

first section of said act, which provides "that when the cause of action grows out of a sale or renting, or hiring of property, whether real or personal, if the court (or where it is a jury case,) the jury think, that under all the circumstances, the fair value of the property sold would be the most just measure of recovery in the action, either of these principals may be adopted as the measure of recovery."

Which said statute is in conflict with the constitution of the United States and must give way.

Although this section leaves the whole matter to the sound discretion of the court or jury, it tends to confusion, and to mislead court or jury and impair contracts, by giving them a force and effect the parties never thought of are intended at the time.

When parties buy or sell property for a certain sum, payable in a certain and well known depreciated currency, the market value of that currency is the true value thereof, and when the time is fixed for any deferred portion thereof and the seller refuses to receive it at an earlier date, the time and place where due and payable is the time for its scalement. Bissell *vs.* Hayward U. S. 96.

The idea that a court or jury should in after years disregard that fact and be permitted to fix the amount of recovery from the purchaser for the unpaid depreciated currency, by fixing the recovery, at their valuation of the property years before the purchase was made, is the making of a new contract between the seller and purchaser, never contemplated by either. The injustice thereof grows out of the impossibility of the court or jury, to comprehend, years after the transaction, the circumstances attending the sale, by reason thereof, they fix values under different circumstances, and may do gross injustice to buyer or seller.

Such is the case with the decree complained of, for the land in question, in the best and most prosperous times before the war, was never assessed at more than Eighty Dollars per acre for taxation, and the court adopted that valuation as the

value of the land on the 30th day of March, 1863, in the heighth of our great civil war, when the Valley had become the great highway of invading armies, and before said sale Harrisonburg had been repeatedly occupied by the Federal armies, and the Valley had been the scene of battles and the destruction of much property; and by reason thereof the great mass of the farms along the Valley pike and around the towns where armies had encamped and conflicts had taken place, were already on the commons, the whole country shortly after became the scene of the greatest destruction of mills, houses, barns, fencing, and crops, that took place in the Confederacy during the war. This sale took place when we had been threatened with all these calamities; and with the confiscation of our property; and the only currency of the country was depreciated Confederate notes, and Bank and corporation notes that stood upon the same precarious foundation, and commanded no greater value than Confederate issue; consequently all business was done with this currency, or with reference to its value, and all values were based upon that currency and that condition of things. Such was the character and condition of the times and the country that eight witnesses, viz: Wm. Furry, the auctioneer, J. P. Effinger, Col. A. S. Gray, A. S. Byrd, Giles Devier, E. Royer, James Steel, James VanPelt, (seven of these were appellee's witnesses), testify that at the time (March 30th, 1863,) this farm would not have sold for $40 per acre in good money. And Dr. A. M. Newman, Samuel Shacklet, Nelson Sprinkel, Thomas Basford, J. G. Sprinkel, Wm. Rehord, E. J. Sullivan, say that owing to the times, circumstances and *absence of good money, they could not fix any value upon the land* at the time of the sale. Nine of these were appellee's witnesses and put the price of the land very high before and after the war, but when they were brought down to the time and circumstances of this sale, they came down from their lofty eminence, and like A. S. Gray, A. S. Byrd and E. Royer, did not know any one who had, or would have given $40 per acre for it in good money

at that time. A. S. Gray, late U. S. Marshall and appellee's own witness, in his last answer on page 81 of rec., came right to the point when he says, "I would place it," the land, "at what it was worth before the war, less the elements of depreciation"; and he speaks in the same deposition of the destruction of buildings, fences, crops, and possible confiscation, as elements of depreciation in the public mind, and therefore affected the public mind as to its value. And only four witnesses put the land at over fifty dollars per acre at the time of the sale; and these were A. W. Jones, a carpenter; James Kenney, the appellee; Dr. Kyle, a large creditor, who would get nothing on his late judgment without a very heavy recovery against appellant, and P. Bryan, a son of the debtor for the benefit of whose creditors said sale was made, and therefore the only reliable evidence the court had of the value of said land over and above forty or fifty dollars per acre, was the assessment made by the Commissioner of the Revenue before the war in a time of profound peace, when good money was abundant and the country in a flourishing condition. Hence that valuation could not legitimately be taken into consideration in fixing the value of this land in the *midst of war and desolation*, when we had none but a depreciated currency, and when everything was doubt and uncertainty. The value of the land *at the time of the sale*, must control subsequent valuation, is not only fixed by the statute, but repeatedly affirmed by the Supreme Court of Appeals of Virginia in Staples, et als *vs.* Staples et als 24 Grattan Va. rep. 235 6, and Saunders *vs.* Branson 22 Grattan 366-7, and in other cases.

There is another and very important "circumstance" to be considered, and that is the fact that the $14,135.40 paid in hand by appellant on this farm, paid dollar for dollar $14,135-40 of A. C. Bryan's old anti war debts, (old judgment liens upon these lands) whereas if it had been sold just before the war, when the deed of trust was executed, at its assessed value ($80 per acre) it would have paid but $8,060 of said debts, so that Effinger's down payment paid over $6,000 more than an

auction sale at $80 per acre would have paid And it is but reasonable to presume that Effinger had to call in or collect anti-war bonds and debts due him, or to sell other property of equal relative value before the war, to make this large down payment of $14,135.40; all of which appears in the case of Effinger *vs.* Kenney, trustee, 24 Gratton, Va. rep. 116, and from the record in that case, which is filed with appellant's answer in this case as exhibit Y, and it also appears from Effinger's and Kenney's deposition in this case.

Then these are the circumstances of that sale that ought to control the action of the court in ascertaining and fixing the time at which this debt or bond should be scaled, and the court greatly erred in giving Effinger credit for only $343 68, of the $869.69 paid in U. S. money as aforesaid on this debt.

We submit that the judgment should be reversed and a final decree awarded.

W. A. MAURY,
J. P. EFFINGER,
For Plaintiff in Error.

115-676,577

Office Supreme Court U. S.
FILED
OCT 14 1885
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CLERK.

IN THE

Supreme Court of the United States.

JACOB P. EFFINGER, PLAINTIFF IN ERROR,
vs.
JAMES KENNEY, TRUSTEE FOR A. C. BRYAN,
AND
JAMES KENNEY, TRUSTEE &C., PLAINTIFF IN ERROR,
vs.
JACOB P. EFFINGER.

In Error to the Supreme Court of Appeals of Virginia.

Brief of Wm. B. Compton, for James Kenney, Trustee.

SUPREME COURT OF THE UNITED STATES.

JACOB P. EFFINGER, PLAINTIFF IN ERROR,
vs.
JAMES KENNEY, TRUSTEE FOR A. C. BRYAN.

AND

JAMES KENNEY, TRUSTEE &C., PLAINTIFF IN ERROR,
vs.
JACOB P. EFFINGER.

In Error to the Supreme Court of Appeals of Virginia.

Brief of Counsel for James Kenney, Trustee.

STATEMENT OF THE CASE.

In 1860, Allan C. Bryan conveyed to James Kenney, Trustee, of Rockingham County, Virginia, his real and personal property to secure certain creditors.

Among the lands conveyed in said trust was a tract of 100 acres, near Harrisonburg, called his "Home Farm."

In 1863 the Trustee was requested by creditors secured in the deed to sell the property. There were judgment liens on the real estate which had been rendered before the execution of the Trust Deed, and were therefore superior to it. Among them was a large lien due to Harvey Kyle, another to Morgan, Buck & Co., of Philadelphia, and another to Jacob Dundore. These liens the Trustee ascertained could not be paid off in Confederate treasury notes, but were due and payable only in good money.

The trustee, Kenney, sold the land on the 30th of March, 1863, the purchasers having the privilege of paying two-thirds of the purchase money in hand at the time of the sale. This two-thirds he was willing to accept in

Confederate currency because he could pay it out to the creditors who were secured in the Trust Deed, but the remaining one-third he was not willing to receive in Confederate currency because he could not pay the judgment liens aforesaid in that kind of currency, and was therefore compelled to sell for enough to meet and satisfy those liens in other money. The estimate made by the Trustee before the sale was that by leaving one-third of the purchase money to be paid in good money, it would raise a fund sufficient to pay the prior liens.

The home farm was sold to J. P. Effinger at $210 per acre—Effinger paying two-thirds down and executing his bond for the remaining one-third, amounting to $7,067.70$.

This bond is the subject of this controversy.

In 1865 this bond was transferred or assigned by the Trustee to A. M. Newman, a creditor of Bryan, and Newman sued at law and obtained a verdict and judgment against Effinger for the full amount of the bond. This judgment was afterwards reversed by the Court of Appeals of Virginia and a new trial awarded.

After this the bond was assigned by said A. M. Newman to the Trustee Kenney, and Kenney dismissed the action at law and brought his suit in equity to enforce the vendors lien retained in the deed to Effinger.

The defence set up by Effinger was that the bond was payable in Confederate currency and liable to be scaled.

The Circuit Court of Rockingham, in which the suit was brought, reduced the amount of the bond to $2,692.33, and gave judgment for said sum, with interest from 30th day of March, 1865, and costs, and decreed a sale of the land to pay the debt. From this decree Effinger appealed to the Supreme Court of Appeals of Virginia. The plaintiff, James Kenney, trustee, also insisted upon a reversal of the Decree, claiming that the Court below had erred in not allowing him the full amount of the bond sued on.

Under the Virginia practice no cross appeal was necessary, but the whole matter of law and fact was submitted to the Court of Appeals, and that Court refused to

reverse the decree in favor of either the appellant or appellee, and affirmed the decree of the Circuit Court.

To the decree of said Supreme Court of Appeals the said Effinger applied for and obtained a writ of error, and the said Kenney, trustee, likewise obtained a *cross-writ*.

ERRORS ASSIGNED.

The following errors are assigned and will be relied on in behalf of said James Kenney, trustee:

First. The Court of Appeals of Virginia erred in refusing to reverse the decree of the Circuit Court of Rockingham in favor of said appellee, and in refusing to decree in favor of said Kenney, trustee, for the full amount of the bond sued on.

Second. Said Supreme Court of Appeals erred in affirming the decree of the Circuit Court of Rockingham and allowing said James Kenney, trustee, only the sum of $2,692.33, with legal interest from the 30th day of March, 1865, till paid, instead of allowing the sum of $7,067.70¾, the amount of the bond sued on with interest from said last-named date.

ARGUMENT.

The following propositions of law and fact are respectfully submitted:

First. The bond sued on was not to be paid in Confederate State treasury notes, nor entered into with reference to such notes as a standard of value.

Second. James Kenney, trustee, is entitled to recover the full amount of said bond with interest, and the decree of the Court below is therefore erroneous.

If these two propositions are not sustained, then we submit that this Court has no jurisdiction of the case because—

1st. There was no Federal question raised in the Court below nor decided there.

2d. No such question was necessarily involved in the decision of the case.

3d. The Act of Assembly of Virginia, passed February 19, 1867, is not in conflict with the Constitution of the United States.

1. *Was the bond according to the true understanding of the two parties, Effinger and Kenney, to be paid in Confederate notes or entered into with reference to such notes as a standard of value?*

In 1866 the Legislature of Virginia passed an act authorizing either party to show by parol or other relevant evidence what was the true understanding and agreement of the parties to all contracts made between the 1st of January, 1862, and the 10th of April, 1865, and authorizing the same to be scaled either to the value of said notes or the day of the contract or at the time the same fell due, or at such other intermediate time as to the court or jury might seem right in the particular case. This act is found in the Session Acts of 1865–6, page 184–5, and also in the Code of Virginia of 1873, chap. 138, page 980, and reads as follows: "Whereas, a depreciated currency, known as Confederate treasury notes," &c. "Therefore, be it enacted by the General Assembly, that "in any action or suit or other proceeding for the enforce- "ment of any contract expressed or implied, made and en- "tered into between the 1st of January, 1862, and the 10th "of April, 1865, it shall be lawful for either party to show "by parol or other relevant evidence what was the true "understanding and agreement of the parties, either ex- "pressed or to be implied in respect to the kind of cur- "rency in which the same was to be fulfilled or performed "or with reference to which, as a standard of value, it "was made and entered into."

This is the first section.

The second section provides that "whenever it shall "appear that any such contract was according to the true "understanding and agreement of the parties to be ful- "filled or performed in Confederate treasury notes or was "entered into with reference to such notes as a standard "of value, *the same shall be liquidated* and settled by re- "ducing the nominal amount due or payable under such "contract to its true value at the time they were respec- "tively made and entered into, or at such other time as "may to the Court seem right," etc.

Very soon after its passage it was found that there

was a large class of cases in which it could not be definitely ascertained by evidence under that act, what kind of currency or money was intended by the the parties; and also because of the fact that many contracts were entered into during the war in which the true understanding was not for the payment of Confederate currency, but for some undefined currency or money, which in many cases might be termed contracts of hazard.

In order to enable the Courts to settle this large class of cases, many of which were not in fact Confederate contracts, the Legislature at its next session passed an act, which is found in the Code of Virginia of 1873, chap. 138, page 979–80, section 1, which enlarged the powers of the Court in hearing evidence.

This act was not intended to supercede, or in any manner affect the act of 1865–6, so far as Confederate contracts are concerned; but the two acts are to be read together—the one to be applied to all cases where the contract was made or entered into with reference to Confederate treasury notes. The other was intended to apply to other cases, where it would be impossible to do justice between the parties on account of the *uncertainty* existing at the time in regard to the kind of currency which would be required in order to pay off and discharge the obligation, and to admit evidence of values in certain cases where the Court should believe the value of the property is the best evidence of the true value of the contract.

The Court of Appeals of Virginia decided as early as 1872, in the case of Tams vs. Branneman, 23 Grat., 813, that the word *"parties"* in the act aforesaid means *both parties*, and therefore that when a contract on its face is silent as to the kind of money in which it is payable, and the defendant undertakes to prove that it was entered into with reference to Confederate notes, he must prove *that such was the true understanding* and agreement of *both parties*.

It matters not what may have been understood by others, the question is what the parties to the contract understood between themselves. If they both understood that the contract was payable in Confederate notes,

then, under the imperative language of the act, it must be sealed.

In the case at bar no such understanding has been proven. James Kenney, the trustee, (who is a disinterested witness), denies emphatically and positively any such understanding or agreement. He gives his reasons. He is sustained by the circumstances. Confederate notes had been daily depreciating from the day they were first issued up to the day of the sale, in March, 1863, and were becoming more worthless every day.

He could not pay off the judgment liens, which were ahead of his trust deed, and thereby make a good title to the purchasers of the real estate without providing a fund to pay these prior liens—which fund could not be Confederate notes—because the parties who held said judgment liens were unwilling to receive that kind of currency, and some lived inside the United States lines in Northern States, and were beyond his means of communication. (Page 63, 2d question.)

Hence it was that he was only willing to permit purchasers to pay *two-thirds* of the purchase money in cash. The other third was to be secured by bond, payable two years after date, secured by lien on the land.

Kenney's testimony alone ought to settle the case—under the ruling of the Court of Appeals of Virginia in the case of Tams and Branneman.

But how did Effinger understand it? *He says* he understood it was a Confederate contract.

But he stands contradicted by five disinterested witnesses, who prove that he repeatedly stated the contrary.

Dr. A. M. Newman (who has no interest now in the case, and had none when he testified,) stated that he was familiar with the reasons that induced Kenney, the trustee, to sell for only one-third cash. (Page 69–70.)

He further proves that Effinger told him he would make an endorsement on the bond (the bond sued on), stating that it *"was not to be paid in Confederate money."* (Page 70, questions 6 and 7.)

This conversation occurred in the summer or fall of 1864.

Dr. Harvey Kyle, another witness, confirms the testimony of Dr. Newman and proves that Effingor stated to him after the conversation with Newman that *"he* (Ef-

finger) *would endorse upon it that it was not to be paid in Confederate money.*" (Page 84, 2d question.)

L. W. Gambill, another disinterested witness, states that at the sale he told Effinger that the back payment "*was as much as the land was worth.*" (Page 18, 2d answer.)

A. W. Jones said about the same thing to Effinger, and Effinger replied that "*if it went for* $300 *it was worth* $100." (Page 59, 7th answer.)

L. W. Gambill proves that on the trial of the case at law John McQuaide (since deceased), testified that Effinger told him "*that the last payment was to be paid in good money, such as Mr. Bryan's creditors would receive.*" (Page 18, 10th answer.) And that A. C. Bryan (since deceased), testified to the same. (11th answer.)

Col. A. S. Gray also understood that the last payment could not be paid in Confederate currency. (Page 77, 2d answer.)

E. J. Sullivan also understood it in the same way, and he was a purchaser at the sale, *his interest* being in favor of Effinger, and he was *introduced in behalf of Effinger.* (Page 40, 41, 42.)

Pendleton Bryan, Wm. Reherd, R. A. Gray, James Steele, and others, understood it in the same way.

The fact that other witnesses (most all of whom are interested), state that they did not hear the terms of sale, or did not so understand them, is of very little value as evidence.

One witness to an affimative fact is better than ten to a negative.

Effinger knew the judgment liens ahead of the trust deed were payable in good money, and he bought with full knowledge that he could not pay off said liens in Confederate notes. He was willing to take the risk of being able to pay in *some other currency* which would be satisfactory to the lien creditors.

He may have thought that as Greenback or National currency was depreciating rapidly in the North that he would be able to pay in that kind of currency, which was a legal tender, and which at the time of the sale was only worth about 1.60 for 1, and in 1864 went down to 2.60.

It is impossible as well as unnecessary to attempt to speculate on the various views that were entertained by people at the date of this contract.

No two men perhaps though exactly alike. We do know however that this land would have brought a great deal more, if the terms of the sale had permitted the whole purchase money to be paid in Confederate notes. See testimony of A. S. Gray, (page 78); James Steele, (page 95); R. A. Gray, (page 82); James Kenney, (page 63); A. W. Jones, (page 59.)

We submit therefore that if the Court has jurisdiction to review and reverse the decree of the Supreme Court of Appeals of Virginia in this case, that the same should be reversed in favor of said Kenney, trustee, and a decree rendered for the full amount of the bond.

Before leaving this branch of the case it may be proper to add a remark in reference to the decision of the Court of Appeals of Virginia in the case of Jas. Kenney, trustee, use of A. M. Newman vs. J. P. Effinger, referred to by the counsel for Effinger, in 24 Grat., page 116.

This case was an action of debt on the bond brought by Newman, the assignee of Kenney, trustee, and decided by a jury. The opinion of the Court reversing the verdict and granting a new trial was an *obiter dictum*, so far as it attempted to construe the contract as a Confederate contract.

It is hardly necessary to say that if that opinion had had any binding force in this cause, Effinger would have filed his plea of *res adjudicata*, and relied upon it as settling the question. His failure to do so was an admission that that part of the opinion of Anderson, judge, was *obiter dictum*.

The case went up on a bill of exceptions, and this Court cannot know what facts were certified, but it is sufficient to say that the Court of Appeals of Virginia did not regard that opinion as binding on them, and certainly it can have no weight with this Court in determining this case.

It may or may not have been sustained by the facts certified in the bills of exception, which were before the Court at the time. But what those facts were cannot now be known to this Court, and cannot affect its judgment.

The parties to that case were not the same. A. M. Newman was the real plaintiff. The bill of exceptions may have been carelessly or improperly prepared, material facts may have been omitted, or the evidence may have been conflicting; at any rate the opinion was based on a different case from the one now before the Court, and is not to be regarded as having anything to do with this case.

HAS THIS COURT JURISDICTION OF THIS CASE?

The only ground upon which the Court can have jurisdiction is the alleged unconstitutionality of the act of the Legislature of Virginia, passed February 28, 1867, amending the first and second sections of the act of March 1866. This act is found on pages 694–5, Session Acts 1867; and in the Code of Virginia of 1873, chapter 138, pages 979–80, sections 1 and 2.

The amendment is to the first section of the act of 1866, and is as follows: "*Provided*, That when the cause "of action grows out of a sale, or renting, or hiring of "property, whether real or personal, if the Court (or "when it is a jury case) the jury, think that under all the "circumstances the fair value of the property sold, or the "fair rent or hire of it, would be the most just measure "of recovery in the action, either of these principles may "be adopted as the measure of the recovery instead of "the express terms of the contract."

The second section is re-enacted just as it is found in the act of 1866, and provides that *whenever the contract* was made for Confederate treasury notes, or was entered into with reference to such notes as a standard of value, *it shall be* liquidated and settled by reducing the nominal amount "*to its true value*," *etc.*

It will be seen, therefore, that no attempt was made by the Legislature to authorize courts or juries to do other than scale the debt to its true value *in all cases of Confederate contracts*, or contracts clearly made to pay Confederate notes.

The language of the second section is peremptory and explicit "*Whenever*" *it shall* "*appear*," *etc.*

The first section of the amended act is only *permissive*, not mandatory. "*Either of these principles may be* "*adopted*," *etc.*

The grounds upon which we insist that this Court has no jurisdiction are:

1st. No such question was raised or decided in the Circuit Court nor Court of Appeals.

The act of 1867 is no where referred to nor relied on.

The contention on the part of Kenney, trustee, was that the bond was not a Confederate contract, but was payable in good money, or such money as the judgment creditors of Bryan would receive. On the other hand, Effinger claimed that it was a Confederate contract and ought to be scaled. The Court being unable to clearly ascertain the true intent and meaning of the contract (according to Judge Bird's view at least), fixed upon the

fair value of the property as the true measure of the value of the consideration agreed to be paid by Effinger.

In this we think the Court erred in favor of the defendant, Effinger, and if so, then he has no right to complain.

It may be regarded now as the well settled rule of law in this Court, that it is not sufficient to show that a Federal question might have arisen in the Court below, but it must be shown *that it did in fact arise and was decided.* Crowell vs. Randall, 10 Peters 398; Ocean Ins. Co. vs. Polleys, 13 Peters 157.

And the Court can look only to the record of the case, not to the opinion of the Court nor to arguments of counsel. Armstrong vs. Treasurer, 16 Peters 282; Gibson vs. Choteau, 8 Wallace 314.

In Mills vs. Brown, 16 Peters 526, this Court dismissed the writ of error in a case somewhat similar to this, on the ground that a constitutional question *was not necessarily* involved, and refused to decide the case, although the parties agreed to have it decided on its merits. Consent could not confer jurisdiction.

In Railroad Co. vs. Rock, 4 Wallace 180, this Court refused to consider a certificate made by the Chief Justice of Iowa to show that a constitutional question was involved, and dismissed the writ of error for wart of jurisdiction.

And in Parmalee vs. Lawrence, 11 Wallace 38; and Ins. Co. vs. Treasurer, Idem 204, the same principles were reaffirmed.

See also, Gibson vs. Choteau, 8 Wallace 317; Sternes vs. Franklin County, 14 Wallace 15; and Kennebec R. R. vs. Portland R. R., 14 Wallace 25; Carpenter vs. Ballard, 14 Wallace 241.

The Federal question must have arisen by such clear and necessary intendment that the Court below could not have given judgment without deciding it, and that fact must appear from the record. Parmelee vs. Lawrence, 11 Wallace 36.

Jurisdiction will not be taken by this Court, if the judgment may have been given by the Court below on other grounds. Sternes vs. Franklin County, 14 Wallace 15; Kennebec R. R. vs. Portland R. R., 14 Wallace 23.

Bearing this principle in mind, was the Court below bound to scale this debt to gold, when there was no evidence in this record to show the value of gold in March, 1863?

It must appear from the record that the Federal ques-

tion (or question of the constitutionality of the act in this case) *was in fact decided in the Court below.* Commercial Bank vs. Buckingham, 5 Howard 317; Smith vs. Hunter, 7 Howard 738; Croft vs. Vose, 14 Wallace 5.

We submit that no such question was either necessarily involved, nor decided in the Court below.

No reference was made to the act by either party, Kenney was not willing to submit to anything short of a decree for the whole bond. Effinger was relying on the scale with reference to the value of gold.

The language of the Decree (page 100) is: "The Court "is of the opinion that the *contract* between the plaintiff "and defendant, J. P. Effinger, *for the sale and purchase* "*of the tract of land* mentioned in the bill was made and "entered into *with reference to Confederate States Treas-* "*ury notes as a standard of value*, and that the fair value "of the property on the day of sale would be the most "just measure of recovery," etc.; *that is, that it is the best evidence of the value of the consideration agreed on by the parties*, there being no other reliable evidence of the value of the contract. This Court looks to the result, not to the reasoning which produced the result.

Now, it was *true in part* that the contract was made and entered into with reference to Confederate notes as a standard of value; true as to the two-thirds which was paid down; true therefore as to the greater part of the contract, *but not true as to the whole contract.*

And if this Court shall be of opinion that the Court below went too far in assuming that the whole contract (or "*the contract*") was entered into with reference to Confederate notes—when the evidence clearly proves the contrary—then the Court can hardly say that Effinger has any right to complain of the decree which reduces the bond from $7,067.70 to $2,692.33, or a little more than one-third.

The Court below—the Court of Appeals of Virginia—simply affirmed the decree of the Circuit Court.

If either the Circuit Court or Court of Appeals had been of the opinion that the *whole contract* (including this bond) was made and entered into with reference to Confederate notes as a standard of value, they were imperatively required by the law (section 2d) to scale the debt, not to allow the value of the property, and their refusal to obey the law *would have been no ground for the interposition of this Court.*

The action of the Court of Appeals would have been *final, though erroneous.*

But the Court below and the Court of Appeals seem to have looked at the *whole contract* for the sale and purchase of the land, and to have regarded it not as a contract expressly to pay Confederate notes, but as made upon a Confederate basis as to value; and, regarding it in that light, to have reduced the bond with reference to the value of the land, in good money, in March, 1863; and in doing so, the Court may have violated the law of Virginia, and given the plaintiff Kenney, trustee, much less than under the law he was entitled to; or, on the other hand, more than he would have received if gold had been regarded as the standard of values in March, 1863; but the error, whether in favor of one party or the other, would not involve, and *did not involve*, the *validity of a State statute.* On the contrary, it simply involved the question whether the Court did or did not err *in refusing to apply the statute.*

It will, perhaps, be contended in argument that the evidence taken in the cause in regard to the value of the property, shows that the act of 1867 was relied on and involved. But this is by no means correct. The evidence as to value was introduced, on the one hand, by the plaintiff to prove that it was not a Confederate contract. While, on the other hand, it was introduced by the defendant to prove that it was a Confederate contract. Both parties regarding the value of the land as shedding light upon the question as to the kind of currency or money for which the land was sold.

In the case of Tams vs. Branneman, before referred to (23d Grat. 813), Christian, judge, said: "When the con-"tract of the parties sheds no light upon the question as "to the kind of currency in which it is to be performed "or fulfilled, the *price* for which the land is sold is a most "important element to be considered *in determining the* "*character of the contract.*"

In Morgan's Admx. vs. Otey (21st Grat. 619), the price for which the property sold was considered a most important element *in determining the character* of the contract.

In that case the property was worth $1,200 in gold on the day of sale; $1.200 in gold would have purchased $14,000 in Confederate notes. The price as agreed on for the land was $3,700; and the Court said: "It is impossible "to conclude that any man of common sense would sell "land for $3,700, Confederate money, when it was worth "$14,000."

Such a contract would have been set aside by a Court of Equity as an "*unconscionable bargain.*"

This brings us to the consideration of the most interesting question in the cause. *Does the Virginia Act of Assembly of February* 19, 1867, *conflict with article* 8, *section* 10 *of the Constitution, which prohibits the States from passing laws impairing the obligations of contracts?*

It will be conceded by all sensible men that this provision of the Constitution is a most important and healthy one. It is one of the strongest and best of the many wise provisions in that model instrument.

But it often becomes a nice and delicate question for the courts as to its practical application. Not every law which seems to deprive an individual of some right is to be construed as invalid. If such were true, then we might claim that even conceding, for the sake of argument, that this contract was entered into with reference to Confederate States Treasury notes as a standard of value, nevertheless that the whole legislation of Virginia, which permits the contract to be varied from its strict technical, common-law meaning, was invalid and unconstitutional. That, for instance, in the case at bar the contract on its face was an express contract to pay dollars and cents, and that any legislation looking to a change in the strict, legal, technical term dollars and cents, so as to substitute anything in their place, other than constitutional money, was a law impairing the obligation of the contract and therefore void.

But we know that the Court in the case of Thorington vs. Smith, 8 Wallace, has already passed upon the validity of such a law and has sustained it unanimously.

Again we know that many other State laws have been held to be valid which affect only the remedy but do not impair the contract itself.

In the case of White vs. Hart, 13 Wallace, this Court held that the seceded States were never, in fact, out of the Union, and it follows, therefore, that in strict, legal contemplation the bond in this case was and is on its face payable in constitutional. lawful money of the United States, and that any law which permits it to be paid in other currency, or currency of less value, would be in conflict with the *letter* of the constitution if not with its *spirit*.

But we know that in the legal-tender cases this Court has held that a debt contracted at a time when nothing but gold and silver were lawful money, can be paid in United States Treasury notes, though those notes may be at a discount of 10, 20 or even 50 per cent. as compared with gold and silver.

It is true that there is no provision in the constitution

expressly prohibiting *Congress* from passing laws impairing the obligation of contracts; but such a proviso was wholly unnecessary, because Congress has no power except such as has been delegated to it, and therefore has no power to pass such laws, none such being expressly authorized; but the States are inhibited because all power not delegated by them to the Federal Government is reserved to the States or to the people of the States.

And it will hardly be contended that Congress, any more than the States, can pass laws which impair the obligation of contracts.

I allude to these facts because they show the distinction between the cases in which the spirit of the Constitution is violated, as distinguished from the cases where it is not violated in spirit, but only in letter.

Remedies have been abolished, and extended by States; statutes of limitation have been altered, extended and repealed. New remedies, unknown to the common law, have been prescribed. Old remedies have been altered or abolished, and yet such legislation has been upheld by this Court as valid and constitutional.

I might cite many instances of this kind. An examination of the legislation of the various States, and of the cases which have arisen in this Court out of such legislation, will show numerous instances in which the Court has upheld State statutes that seemed to be in conflict with the letter of the Constitution.

But the rule in both State and Federal Courts is "not to declare a law unconstitutonal unless it plainly appears "so to be."

In the Rhode Island case of "Mason vs. Haile," (12th Wheaton 370), it was held that the Legislature could abolish imprisonment for debt altogether, and that such law might extend to present as well as future punishment—affirming the doctrine of Sturgis and Crowningshield, 4th Wheaton.

Judge Marshall said, in Fletcher vs. Peck (6th Cranch 87), "the question whether a law be void for its repug-"nancy to the Constitution, is at all times a question of "much delicacy, which ought seldom, if ever, to be de-"cided in the affirmative in a doubtful case." "The "opposition between the Constitution and the law should "be such that the Judge feels a strong and clear convic-"tion of their incompatibility with each other.

The same section of the Federal Constitution which is invoked in this case, also prohibits the States from passing any *ex post facto* law. And yet it will not be denied that while the letter of the Constitution prohibits

any State from passing *any* ex post facto law, yet this Court has been frequently called on to sustain laws passed by the States that were clearly ex post facto in their character.

And such laws have embraced a variety of subjects: Statutes repealing the usury laws; statutes affecting frauds and perjuries; statutes relating to the registration of deeds, legalizing judicial proceedings, validating defective marriages, affecting limitations of actions and suits, affecting the admission of evidence, both parol and written; and a long list of like State statutes have been before this Court on questions as to their validity and been sustained.

According to Chancellor Kent, statutes which go to confirm existing rights and in furtherance of the remedy by curing defects and adding to the means of enforcing existing obligations, have been held clearly valid when just and reasonable and conducive to the general welfare, even though they might in some degree infringe upon vested rights. (1 Kent Com. 456.) Watson vs. Mercer, 8 Peters 88; Cooley's Const. Lim. 373-4.

"No clause of the Federal Constitution," says Judge Cooley, "has been more prolific of litigation than the "one alluded to," relating to the obligation of contracts.

In the "Home Ins. Co. vs. Augusta, Georgia," (93 U. S. 120), this Court unanimously held that the ordinance of the city of Augusta, imposing on insurance companies an additional license tax of $250, after the State had conferred on such insurance companies a license for that year, and after the city had already imposed and received a tax for that year of one and a quarter per cent upon the receipts of such companies, and issued the license to such companies, was not in conflict with the contract clause of the Federal Constitution.

And in "Terry vs. Anderson," again reaffirmed the doctrine that "statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect." (95 U. S. 632.)

In the case last cited, the Chief Justice used language which may not be inapplicable here:

"Of that (the reasonableness) the Legislature is pri-
"marily the judge; and we cannot overrule the decision
"of that department of the government unless a palpable
"error has been committed. In judging of that we must
"place ourselves in the position of the Legislature," etc.

When the war ended, the State of Virginia found the country full of contracts and obligations, which had been

entered into during its continuance, and many of which if they had been enforced according to the letter of the law, would have been most ruinous to the parties.

The Legislature undertook the delicate task of authorizing the parties by parol evidence to inquire into the consideration, and to get at the true understanding of the parties to such contracts and obligations. In doing so they were actuated by a desire to do justice to the parties. Now, if they had the power to impair, in any sense, the legal effect of the contract, had they not the power to limit the impairment, to place a boundary beyond which the courts and juries should not go?

They knew full well that gold was no standard of value for contracts, and that the value of gold, as compared with Confederate notes, was no true, just or correct standard by which to estimate every contract made during the war.

They knew that gold was but a commodity during the war, and a very scarce commodity, too. That it fluctuated and advanced in value with much greater rapidity than any other article of property that could be mentioned. This was true from the very nature of the case. But a limited amount of coin was in circulation when the war commenced. Instantly it was locked up and retired from general circulation. No one but speculators, blockade-runners and smugglers of goods from within the United States lines could afford to pay the enormous price that was paid for gold. These adventurers were obliged to have it. They could not purchase their goods or carry on their illegal traffic without it. If it cost them more than double, treble or quadruple the value as compared with other things, they could afford to pay the price and advance the price of the smuggled goods to cover the expense. Such was the well-known scarcity of this article that any price could be realized for it which the cupidity of the holder might ask, or his purposes justify.

Quinine was another article that advanced most rapidly in price within the Confederate lines, but unlike gold its quantity increased as the war continued, while the supply of gold became less and less every day, because none was being brought in to take the place of that which had been taken out.

Other personal property advanced rapidly, but not nearly so rapidly as quinine, and none so rapidly as gold and silver.

Land was the last to advance and least rapid in its advance in price.

And it would be more sensible to say that every contract made during the war should be scaled according to its true value as compared with quinine, or with flour, or bacon, than to say that every contract should be scaled with reference to its value in gold at the time.

The truth is there was no gold or silver in circulation after 1861, and it had no fixed value that it is possible to ascertain. It was worth just what its scarcity or the demand for it made it worth; and as it became scarcer and scarcer every day, it necessarily advanced in price every day *without regard to the general and steady depreciation of Confederate currency.*

Gold and silver *was not in circulation as money.* It only exchanged hands from those who held it to those who carried it beyond the Confederate lines, and used it in the purchase of goods.

In this condition of affairs the Legislature passed the act of March 3, 1866, before mentioned. But finding that the act did not meet a class of cases which were not strictly Confederate contracts, as compared with gold or silver, or entered into with reference to Confederate notes as a standard of value, measured with reference to specie, the act was amended and re-enated on the 28th of February, 1867. (Session Acts 1866-'7, page 694, Code of 1873, chapter 138, sections 1 and two.)

This act simply provides as follows:

Section 1. "That in any action, or suit, or other pro-
" ceeding for the enforcement of any contract, express or
" implied, made or entered into between the 1st day of
" January, 1862, and the 10th day of April, 1865, it shall
" be lawful for either party to show by parol or other rele-
" vant testimony what was the true understanding and
" agreement of the parties thereto, either express or to be
" implied, in respect to the *kind of currency* in which the
" same was to be fulfilled or performed, or with reference
" to which as a standard of value it was made or entered
" into; and in any action at law or suit in equity it shall
" not be necessary to plead the agreement specially in
" order to admit such evidence: provided that when the
" cause of action grows out of a sale or renting or hiring
" of property, whether real or personal, if the court (or
" when it is a jury case, the jury) think that, under all
" the circumstances, the fair value of the property sold
" or the fair rent or hire of it would be the most just
" measure of recovery in the action, either of these prin-
" ciples may be adopted as the measure of the recovery
" instead of the express terms of the contract.

2. "*Whenever* it shall appear that any such contract
" was according to the true understanding and agreement

"of the parties to be fulfilled or performed in Confederate "States Treasury notes, or was entered into with refer- "ence to such notes as a standard of value, the same "*shall be liquidated* and settled by reducing the nominal "amount due or payable under such contract in Confed "erate States Treasury notes *to its true value* at the time "they were respectively made or entered into, or at such "other time as may to the court, or if it be a jury case, to "the jury seem right in the particular case," &c.

The rest of the section is not necessary to be here quoted.

It will be perceived then that under this law, *whenever or in every case* where a contract is clearly shown to be a Confederate contract, or entered into with reference to Confederate currency as compared with gold or United States currency, *the courts are absolutely required* to reduce the nominal amount to its *true value*, or gold value as the courts hold. And the courts in executing the law have uniformly held that the words *"true value"* mean value of the Confederate notes referred to as compared with United States currency or legal-tender money.

The question then arises: How can this act be unconstitutional when it provides a mode of ascertaining the true intent and meaning of the parties so far as such intent can be ascertained, and gives the court no discretion in cases where the parties contracted with reference to Confederate dollars, but absolutely requires that such contracts shall be scaled or reduced *to their true value?"*

For in Thorington vs. Smith the court has expressly recognized the propriety of such scaling process, Chief Justice Chase delivering the unanimous opinion of the court.

But it is contended that the first section of the act is invalid because it uses the terms "*instead of the express terms of the contract*," thereby implying, as is alleged, that the courts are authorized to make a new contract for the parties different from the one made by themselves.

We do not think that such was the intention of the Legislature, or that such is the correct interpretation of the language used, *and the courts of Virginia do not so construe it.*

On the contrary, these words simply were intended to mean, and do mean, that a contract which on its face is expressly payable in dollars, and which in legal contemplation prior to the passage of said act was construed to mean *legal tender dollars*, may be now construed by the courts to refer to some other kind of currency or money—Confederate money or such other money as the parties

may be able to show was intended when the contract was made.

It must be obvious to any one who carefully examines the two sections of this act together that there was no intention on the part of the law-makers to authorize or permit the sanctity of contracts to be violated; for *whenever* it shall appear that a certain kind of money or currency was referred to or intended by the parties, that currency or money is to be treated as the medium referred to, and the court or jury is to *enforce* the contract by reducing the nominal amount mentioned to its *true value*—meaning its value in legal tender money of the United States.

The statute therefore differs widely from the North Carolina act, which was the subject of judicial examination by this court in the case of the Wilmington & Weldon Railroad Company vs. King's Executor (91 U. S. 3).

The North Carolina act *required* the jury in making up their verdict to take into consideration *the consideration of the contract*, and to determine the value of the contract in present currency, &c.

The Virginia act not only *does not require* the jury or court to take into consideration the consideration of the contract, but *does not even permit it to be done* in any case when the contract is proven to have been made for Confederate Treasury notes or with reference to such notes as compared with gold.

In the North Carolina case the contract *by its terms* was a Confederate contract. Justice Field says: "By its "terms the wood purchased by the railroad company was "to be paid for in Confederate currency."

Can any one doubt for a moment that under the Virginia act this "wood contract" would have been scaled to its true value?

No other alternative would have been left to the jury or the court.

But the Legislature of Virginia recognized the fact that there was a class of cases in which the courts could not say from the evidence that the parties contracted for Confederate notes, or with reference to such notes as measured by gold, and yet in which, on the other hand, it would be unjust to the debtor party to say that they contracted to pay gold or silver or legal tender money.

Now to meet this class of cases the first section was obviously enacted—otherwise the section is an absurdity. It has no meaning at all if it is to be construed as meaning anything else than what we contend for. It certainly was a most just law to the debtor class, although it might in some cases operate to the injury of the creditor.

The appellant Effinger ought not to complain of a law which enables him to pay a $7,000 bond in a little more than one-third that amount of money in a case where he has not only utterly failed to prove that it was to be paid in Confederate notes, but in which it is proven clearly that both parties understood that it could not be paid in that kind of currency, *by the overwhelming preponderance of the evidence.*

Again: The North Carolina act is *imperative—mandatory.* The first section of the Virginia act is only *permissive.*

The language of the latter is *may*; the language of the former *shall.*

The case at bar furnishes a most striking instance of the necessity for such an act. The parties contracted not for Confederate money, because the judgment creditors of Bryan would not receive Confederate notes in payment of their good money liens; not for gold, for gold was not a medium of exchange at the time—but for something undefined, indefinite, and which depended to some extent on events *in futuro* and to some extent on the will of the judgment creditors.

The strict legal obligation on the part of the purchaser was to pay in gold and silver coin or legal tender currency. For it is a historical fact that Confederate notes were never made a legal tender, even for the payment of debts contracted during the war. They were a mere commodity, and while it is conceded that the laws which subsist at the time and place of making a contract enter into and form a part of it, yet no such law as would require this contract to be payable in Confederate notes existed at the time this bond was executed, or at any other period of the war. And prior to the act of October, 1883 (Session Acts 1863–'4, page 3), all contracts for the payment of dollars and cents were *prima facia* payable in good and lawful money or gold and silver. For at common law no evidence was admissible to contradict, add to, alter, or vary the terms of the written contract; and the consideration of a bond under seal could not be enquired into. Hence the necessity of legislation *to give relief to debtors,*

The language of the Virginia act is not only permissive, but it limits its application to cases where the court or jury believe it would be the *most just measure of recovery*

It was impossible for the Legislature to frame a law to meet each and every particular case, so numerous and varied were the contracts made and entered into during the period mentioned.

It may be safely said that no act is in conflict with the Constitution of the United States which authorizes the courts or juries in ascertaining the contracts of parties to allow "the most just measure of recovery."

What is "the most just measure of recovery?"

It is that amount which most nearly approaches the true amount agreed on and intended by the parties to the contract.

Can human laws get nearer to justice?

It may be that courts and juries will sometimes misapply the law, but that is not the fault of the law.

It may be that the first section of the Virginia act has been applied in cases where the second section properly applied, but that is not a question for this court. This court deals only with the question of the validity of the law itself.

A statute law which arrives at exact and equal justice between man and man can hardly be said to conflict with the provisions of an instrument that aims at the same purposes and objects.

And the very fact that no case has ever been before this court from Virginia involving the validity of this statute is the best proof that it *has been universally acquiesced in* for a period of over fifteen years, during which time it is safe to assume nearly every contract growing out of the war has been settled and adjusted. Acquiesced in by the courts and by the people as the true mode and manner of adjusting liabilities made between the period mentioned in the act.

A sold his land to B at $100 per acre at a period when land had only slightly advanced as compared with gold. The land was worth prior to the war say $100 per acre. The bond is silent as to the kind of money intended. "Dollars and cents" is the language used. *Prima facie* it is a bond payable in the lawful money of the United States. If suit is brought on it and judgment is rendered by default, that judgment is necessarily for the full amount of the bond. But B swears that his understanding was that he was buying for Confederate money. A swears he understood that he was selling for lawful money, or gold and silver. This is all the evidence in the case. Now while it would be manifestly proper for the court to say that B had failed to make out his defence, the burden of proof being upon him, and failing to produce a decided preponderance of testimony, the court could with propriety and justice compel him to pay the full amount of the bond. But the court fixes an amount which bears somewhat more lightly on the debtor, and

which it believes to be the most just measure of recovery under all the circumstances, considering the fact that the parties themselves *misunderstood each other*. Can it be said that this is unjust or illegal? Certainly *the debtor* has no right to complain.

Can a statute be invalid which permits this mode of adjustment when without such statute the parties would be held to have contracted for gold and silver, as required by the strict rules of the common law? Its validity has never been seriously questioned in Virginia.

In one or two cases the Court of Appeals has passed upon the question. First in the case of Pharis vs. Dice. (21 Grat., 303.)

Judge Christian, who delivered the unanimous opinion of the court, after alluding to the fact that in all cases of loaning and borrowing Confederate money the rule of adjustment provided in the second section of the act was the correct rule, says:

"But numerous cases arise in the courts (page 308) "where the contract grew out of a sale or renting or hiring "of property where it became manifest that the adjust- "ment of the rights and liabilities of the parties by scaling "the obligating from its nominal to its real value *in gold* did "not meet the plain object of the act and the require- "ments of justice and fair dealing. It was found in "many cases of this class where possession and title of "the property had been delivered and transferred upon "an obligation to pay Confederate money, that the nomi- "nal price when reduced to its real value was so inade- "quate, as compared with the value of the consideration "received, *as to shock the conscience* and work the gross- "est injustice."

"It was to prevent this injustice, so apparent and so "shocking to every sense of right, that the Legislature "amended the original act," &c.

"So that, as the law now stands, there are two modes "of adjusting rights and liabilities under Confederate "money contracts—two modes, in other words, *of ascer- "taining the value of Confederate money*—one by reduc- "ing the nominal value to the real gold value according "to the scale of depreciation of Confederate States Trea- "sury notes, and the other by taking evidence of the *real "value* of the thing which the amount of the Confederate "Treasury notes agreed to be paid purchased at the time "of the contract. Did a certain amount in such currency "purchase a horse, or tract of land, or other property, "real or personal? Then that amount *was worth the value* "of that horse, or that tract of land, or that other prop- "erty, real or personal, whatever it may be, at the time

"of the purchase and delivery of the property. Which "of these modes is the 'most just measure of recovery' "will depend upon the circumstances of each particular "case."

Such is the reasoning of the Court of Appeals in Pharis vs. Dice. And while it is true that they have, *in part at least*, arrived at the reasons which actuated the Legislature in passing the amended act of February, 1867, we think there were other purposes and objects in the mind of the Legislature—viz., to meet a class of cases like the one at bar where the contract was not intended by the parties to be paid in Confederate notes nor entered into with reference to such notes as a standard of value, but where the parties differed in their understanding with regard to the kind of currency or money intended to be paid, or where they contracted, as in this case, to pay *such money as a third party might be willing to receive*, who was unwilling to receive Confederate Treasury notes.

Pharis and Dice is about the only case in which the validity of the act has ever been seriously called in question in the Court of Appeals of Virginia.

And we challenge the production of a single case in which the Court of Appeals of Virginia has ever held the act valid on any other ground than that stated—viz., *that the value of the consideration of the contract was in many cases most correctly and justly arrived at by taking evidence of the value of the property at the time.*

In no case have they ever claimed that the courts could make a new contract for the parties, or refuse to enforce the contract *as ascertained from the evidence.*

In seeking to mitigate to some extent the harshness of the common law which would have exacted of every debtor the full face nominal amount of his bond in gold or greenback currency, had not the Legislature the power and right to say *how far such mitigation should extend*, so as to protect the rights of the creditors also?

If they had never legislated on the subject the courts would have been powerless to give relief to the debtor; the contracts would have been enforceable however unjust or harsh or oppressive they may have been, and this court could have given no relief. Does it not follow then that the Legislature was to be the judge of *the extent to which such relief should be granted?*

True, *if they impaired the obligation* of the contract the *creditor could complain* and have his relief in the courts. But what right has the debtor to complain?

Justice Field said in the Wilmington & Weldon railroad case: "It was therefore manifest that if these con-

"tracts were to be enforced with anything like justice to "the parties evidence must be received as to the value of "the notes at the time and in the locality where the con- "tracts were made," &c.

But suppose the Legislature had refused to pass a law permitting the parties to introduce evidence, how could the courts have given any relief? There was no power in the courts to give relief without hearing evidence, and under the law as it stood prior to the act no evidence was admissible to "*add to, vary, alter, or explain the terms of a written contract.*" The debtor class was powerless and at the mercy of the creditor without legislative relief. And even this high tribunal, limited in its powers by the Constitution, could have given no relief. (See Atlantic, Tennessee & Ohio Railroad vs. Carolina National Bank, 19th Wall., 548.)

Where is the limit then to the power of the Legislature over the whole question—I mean so far as the debtor class is concerned?

Have they in this case transcended that power?

If in the interests of the debtor class they have passed an act which authorizes the courts *to hear evidence* of the value of the property in order to get at the true value of the consideration agreed on between the parties, an act *which the courts have construed as confining them to an enforcement of the contract, whatever it may turn out to be* from the evidence, and which in no case has ever been construed to authorize the courts or juries to make a new contract or impair the one made by the parties, how can such an act conflict with the Federal Constitution?

There is no evidence in the record to show what the value of Confederate money was in March, 1863, either as compared with gold or any other standard of value.

How then could the Circuit Court or Court of Appeals apply a scale to the debt, even if they regarded it as a Confederate contract?

The court could not supply testimony which the defendant had omitted to take. How can this court say that the court below did not fix the value of the money agreed on between the parties?

In the North Carolina case—"Wilmington & Weldon Railroad vs King" (91 U. S., 3)—the jury were instructed by the court that "the plaintiff was entitled to recover "the *value of the wood* without regard to the value of the "currency" which was agreed on by the parties.

Now, in all the Virginia cases where the question has arisen the courts have held that the value of the property was only one *mode of ascertaining the value of the cur-*

money agreed to be paid as the consideration. (See Pharis vs. Dice, 21st Grat.; Meeweather vs. Dowdy, 25th Grat. 280.)

The North Carolina act therefore "allowed the jury "to place their own judgment upon the value of the con- "tract." But not so with the Virginia act *as construed by the courts of Virginia.*

The only particle of evidence in the record which in any degree tends to fix the value of Confederate notes in March, 1863, is to be found in the deposition of J. P. Effinger at page 57, when, in answer to a question propounded by plaintiff's counsel as to its depreciation, he says: "I do not remember about its appreciation or de- "preciation, but I remember that at the time of the sale "it was about five or five and a fraction for one."

Now, what is meant by *five or five and a fraction for one?* We are left to conjecture. He does not say what standard he is applying—whether gold, silver, United States Treasury notes, quinine, flour, bacon, horses, cattle, or land.

The true relation of the value of Confederate notes to land was not five or five and a fraction. Land had only slightly advanced because of the little demand for it, and the universal demand for all kinds of personal property, particularly the necessaries of life and horses, mules, &c., for the army, had advanced those articles to a point far beyond the advance of land, but gold had gone far beyond all other species of property for the reasons heretofore stated.

Now we submit that there is no proof in this record that the court below has disregarded the contract, even if it is to be considered and treated as a contract payable in Confederate notes.

There is no proof that the value of the Confederate notes was any greater as compared with the land than the amount which the court below has fixed and ascertained.

How then can the court be asked to reverse the decree in favor of the plaintiff in error?

On the other hand, have we not the right to ask that it be reversed in favor of the trustees?

The fact that one-third of the purchase money was allowed to be paid down, with the privilege of paying another third, but with a distinct understanding that the remaining third or last payment would not be received, *certainly means something.*

There can be no doubt that Effinger so understood